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SUPREME COURT, U.S.

Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 197

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

CROMPTON-HIGHLANDS MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 4, 1948.
CERTIORARI GRANTED OCTOBER 11, 1948

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PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Filed Dec. 8th, 1947.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No.....

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

CROMPTON-HIGHLANDS MILLS, INC.,
Respondent.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (Public Law 101, 80th Congress, 1st Session, Chapter 120), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against respondent, Crompton-Highland Mills, Inc., Griffin, Georgia, and its officers, agents, successors and assigns. The proceedings resulting in said order is known upon the records of the Board as "In the Matter of Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O., Case No. 10-C-1812."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Georgia Corporation, engaged in business in the State of Georgia, within this judicial

circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on August 21, 1946, duly stated its findings of fact, conclusions of law and issued an order directed to the president, and its officers, agents, successors, and assigns. Thereafter on August 26, 1946, the Board issued an order amending the decision and order. So much of the aforesaid order as relates to this proceeding provides as follows:

---

2 ORDER.

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Crompton-Highland Mills, Inc., Griffin, Georgia, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Worker's Union of America, CIO, as the exclusive representative of the respondent's production and maintenance employees at the Griffin plant, including watchmen, but excluding office, clerical, technical, and laboratory employees, section men in the spinning room, head loom fixers in the weave room, and fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees

with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, by taking action, without prior consultation with said organization, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Textile Workers Union of America, CIO, to bargain collectively with it as the representative of its employees in the appropriate unit described above.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all its employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant at Griffin, Georgia, copies of the notice attached hereto, marked "Appendix A". Copies of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region (Atlanta, Georgia) in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On August 21, 1946, and August 27, 1946, the Board's decision and order and amendment thereto, respectively were served upon respondent by sending copies thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon set forth in paragraph (2) hereof a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by respondent, marked "Appendix A", shall specifically recite that the Board'c order has been enforced by a decree of this Court so that the introductory clause of the Notice shall read as follows: "Appendix A, Notice to All Employees, pursuant to a decree of the United States Circuit Court of Appeals enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:".

(Sgd.) RUTH WEYAND,
(Ruth Weyand)
Acting Assistant General
Counsel.

Dated at Washington, D. C., this 4th day of December, 1947.

APPENDIX A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We Will Not make any change with respect to rates of pay, wages, hours of employment, or other conditions of employment of our employees in the bargaining unit described below, without prior consultation with Textile Workers Union of America, CIO.

We Will Not in any manner interfere with the efforts of Textile Workers Union of America, CIO, as the exclusive representative of our employees in the unit described below, to bargain collectively with us.

The bargaining unit is: All production and maintenance employees at our Griffin plant, including watchmen, but excluding office, clerical, technical and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second

hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

CROMPTON-HIGHLAND MILLS, INC.
(Employer.)

By .....
(Representative.) (Title.)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia, ss.

Ruth Weyand, being first duly sworn, states that she is Acting Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that she is authorized to and does make this verification in behalf of said Board; that she has read the foregoing petition, and has knowledge of the contents thereof; and that the statements made therein are true to the best of her knowledge, information and belief.

(Sgd.) RUTH WEYAND,
(Ruth Weyand)
Acting Assistant General Counsel.

Subscribed and sworn to before me this 4th day of December, 1947.

(Sgd.) KATHRYN B. HARRELL,
(Seal) Notary Public, District of Columbia.

My Commission Expires February 29, 1952.

6 ORDER TO FILE PETITION.

Filed December 8, 1947.

In the United States Circuit Court of Appeals for the Fifth Circuit.

National Labor Relations Board, Petitioner,
vs. No. .....
Crompton-Highland Mills, Inc., Respondent.

A petition for the enforcement of an order of the National Labor Relations Board made on August 21, 1946, as amended on August 26, 1946, "In the Matter of Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.", Case No. 10-C-1812, N. L. R. B., having been presented to this Court,

It Is Ordered that said petition be filed and the case docketed as of December 8th, 1947, and,

It Is Further Ordered that upon the filing with the Clerk of a certified copy of a transcript of the proceedings of the National Labor Relations Board in the above entitled matter, the Clerk shall forthwith give notice thereof to the said respondent.

(Signed) J. C. HUTCHESON, JR.,
United States Circuit Judge.

New Orleans, Louisiana.

NOTICE OF HEARING

N. L. R. B. 234 (6-2-42)

United States of America.

Before The National Labor Relations Board,
Tenth Region.

In the Matter of;
Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.
Case No. 10-C-1812.

Rec'd. National Labor Relations Board. Case No. 10-C-1812. Board Exhibit No. 1-A. In the Matter of Crompton-Highland. Date 2/20/46. Pp. 7.
By HALLAM,
Official Reporter.

Please Take Notice that on the 18th day of February, 1946, at 10 o'clock in the morning, in the Spaulding County Courthouse, Griffin, Georgia, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Tenth Region on this 4th day of February, 1946.

ARTHUR C. JOY.
Acting Regional Director.
NATIONAL LABOR RELATIONS BOARD.

(Seal)

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8 COMPLAINT.

United States of America.

Before The National Labor Relations Board.

Crompton Highland Mills, Inc.
and
Textile Workers Union of America, CIO.

It having been charged by Textile Workers Union of America, CIO, that Crompton-Highland Mills, Inc. has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, hereinafter referred to as the Board, by the Regional Director for the Tenth Region as agent for the Board, designated by National Labor Relations Board

Rules and Regulations—Series 3, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

I.

Crompton-Highland Mills, Inc., herein referred to as Respondent, is and has been since December 15, 1944, a corporation duly organized under and existing by virtue of the laws of the State of Georgia.

II.

At all times herein mentioned, Respondent has maintained its principal office and place of business in the City of Griffin, County of Spalding, State of Georgia, hereinafter called the Griffin plant, and is now and has been continuously engaged at said Griffin plant in the manufacture, sale and distribution of cotton cloth, including, but not limited to, corduroy, velvet, velveteen, and jungle cloth and related products.

III.

Respondent, in the course and conduct of its business operations, causes and has continuously caused more than 50 per cent of the material used in manufacturing cotton cloth, including raw materials consisting of cotton and other items of a value in excess of $200,000 during the calendar year 1945, to be purchased, delivered and transported in interstate commerce from and through states of the United States other than the State of Georgia, to its Griffin plant; and causes and has continuously caused more than 90 per cent of the product, cotton cloth of a value in excess of $250,000 during the calendar year 1945, manufactured, produced and transported by

it as a part of its business, to be delivered and transported in interstate commerce to and through the states of the United States other than the State of Georgia from its Griffin plant.

IV.

Textile Workers Union of America, CIO, hereinafter referred to as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

V.

All production and maintenance employees, including watchmen, of Respondent, employed at its Griffin plant, but excluding office, clerical, technical and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

VI.

On August 13, 1945, the National Labor Relations Board issued its certification of representatives in the matter of Crompton Highland Mills, Inc., and Textile Workers Union of America, CIO, Case No. 10-C-1465, which certified that the Union had been designated and selected by a majority of the employees in the unit described above in paragraph V as the exclusive representative of all such employees for the purposes of collective bar-

gaining with respect to rates of pay, wages, hours of employment, and other conditions of employment and at all times since August 13, 1945, the Union has been the representative for the purpose of collective bargaining of a majority of the employees in said unit designated in paragraph V and, by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VII.

On or about August 31, 1945, the Union requested Respondent to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment with the Union as the exclusive representative of all the employees of Respondent in the unit described above in paragraph V. From that date until on or about December 19, 1945, and thereafter to date no agreement has been reached concerning rates of pay and wages of employees in the unit described above in paragraph V, and the Respondent has not bargained in good faith with respect thereto.

VIII.

On or about January 1, 1946, Respondent did fail to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in paragraph V with respect to rates of pay and wages, and did on or about January 1, 1946 unilaterally grant wage increases to such employees.

IX.

By the acts described above in paragraphs VII and VIII, Respondent did engage in and is engaging in un-

fair labor practices within the meaning of Section 8(5) of the Act.

X.

Respondent, from on or about August 2, 1945, to date, has vilified, disparaged and expressed disapproval of the Union.

XI.

By the acts described above in paragraphs VII, VIII, and X, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(1) of the Act.

XII.

The activities of Respondent, described above in paragraphs VII, VIII, and X, occurring in connection with the operations of Respondent described above in paragraphs I, II, and III, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes and obstruct commerce and the free flow of commerce.

XIII.

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(1) and (5) and Sections 2(6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 31st day of January, 1946, issues its complaint against Crompton Highland Mills, Inc., Respondent herein.

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13 SECOND AMENDED CHARGE.

Date Filed February 4, 1946.

NLRB 501 (12-1-44)

9. Received Feb. 4, 1946, National Labor Relations Board, Tenth Region.

United States of America.

Before The National Labor Relations Board,
Tenth Region.

In the Matter of:

(Name of Company) Crompton-Highland Mills, Inc. and (Name of charging party) Textile Workers Union of America, CIO.

Case No. 10-C-1812.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that (Full name of company) Crompton-Highland Mills, Inc. at (Address of establishment) Griffin, Georgia employing (Number) 700 workers in (Type of business) production cotton textiles has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (5) of said Act in that from on or about August 2, 1945, the Company has vilified, disparaged and expressed disapproval of the Textile Workers Union of America, CIO, and in that since on or about August 31,

1945, the Company has not bargained with said Union in good faith with respect to rates of pay and wages of the employees in the unit certified by the National Labor Relations Board in the matter of Crompton-Highland Mills, and Textile Workers Union of America, CIO, Case No. 10-R-1465, and in that on or about January 1, 1946, the Company failed to bargain collectively with said Union as the exclusive representative of the employees in the designated unit with respect to rates of pay and wages and did on that day unilaterally grant wage increases to such employees, and by said acts and other acts has interfered with, restrained and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

TEXTILE WORKERS UNION
OF AMERICA, CIO,
KENNETH DOUTY,
Georgia State Director.

Subscribed and sworn to before me this 1st day of Feb., 1946, at Atlanta, Ga.

EULA OLA WARREN,
(Seal) Notary Public, State at Large,
Atlanta, Ga.

My Commission Expires May 27, 1946.

AFFIDAVIT OF SERVICE OF NOTICE OF HEARING DATED 2-4-46, SECOND AMENDED CHARGE
14 DOCKETED 2-4-46, AND COMPLAINT.

NLRB 877 (4-15-46)

United States of America.

Before The National Labor Relations Board.

In the Matter of:
Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.
Case No. 10-C-1812.

Rec'd. National Labor Relations Board. Case No. 10-C-18-12. Board Exhibit No. 1-B. In the Matter of Crompton-Highland. Date 2/21/46. Pp. 3.
By HALLAM,
Official Reporter.

Date of Mailing: February 4, 1946.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Crompton-Highland Mills, Inc.,
Griffin, Georgia.

Textile Workers Union of America, CIO,
75 Ivy Street, N. E.,
Atlanta, Georgia.

JIM T. HYDE

Subscribed and sworn to before me this 5th day of February, 1946.

GRACE FOWLER,
Designated Agent.
NATIONAL LABOR RELATIONS BOARD.

N of H, Sec. Amen. Pet. & Complaint, 2-4-46—10-C-1812 Union.

Form 3811 Rev. 1-4-40.

Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of address) Textile Workers Union of Am.

2. Signature of addressee's agent—Agent should enter addressee's name on line One above) Ray E. Young.

Date of delivery: 2/5/46.

Post Ofifce Department, Official Business.

Penalty for Private Use to Avoid Payment of Postage, $300. (GPO)

Postmark of Delivering Office: Atlanta, Feb. 5, 5:30 PM, 1946, Ga. 2.

Return to (Name of Sender): National Labor Relations Board, Tenth Region.

Street and Number, or Post Office Box: 300 Ten Forsyth Street Building Atlanta, Georgia.

Registered Artcile No.: 435726.

Insured Parcel No.: .....

Atlanta, Georgia.

Notice of H, Sec.. Amend. Pet. & Company, 24-46, 10-C-1812, Company.

Form 3811 Rec. 1-4-40.

Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee) Crompton Highland Mills.

2. Signature of addressee's agent—Agent should enter addressee's name on line One above) Cecil O'Kelley.

Date of delivery: Feb. 5, 1946.

Post Office Department, Official Business.

Penalty for Private Use to Avoid Payment of Postage, $300. (GPO)

Postmark of Delivering Office: Griffin, Feb. 5, 12 M, 1946, Ga.

Return to (Name of Sender): National Labor Relations Board, Tenth Region.

Street and Number, or Post Office Box: 300 Ten Forsyth Street Building, Atlanta, Georgia.

Registered Article No.: 435725.

Insured Parcel No.: .....

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15 ORDER.

United States of America.

Before The National Labor Relations Board,
Tenth Region.

In the Matter of:
Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.
Case No. 10-C-1812.

Rec'd. National Labor Relations Board. Case No. 10-C-1812. Board Exhibit No. 1-C. In the Matter of Crompton-Highland. Date 2/20/46.
By HALLAM,
Official Reporter.

It Is Hereby ordered that the hearing in the above-entitled matter, heretofore scheduled to be held on February 18, 1946, at 10 o'clock in the morning, in the Spaulding County Courthouse, Griffin, Georgia, be postponed to February 20, 1946, at the same time and place.

Dated at Atlanta, Georgia this 8th day of February, 1946.

(Seal)

PAUL L. STYLES,
Regional Director, Tenth Region.
NATIONAL LABOR RELATIONS BOARD.

AFFIDAVIT OF SERVICE OF ORDER CHANGING HEARING DATE TO 2-20-46 DATED 2-8-46.

NLRB 877 (4-15-45)

16 United States of America.

Before The National Labor Relations Board.

In the Matter of:
Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.
Case No. 10-C-1812.

Rec'd. National Labor Relations Board. Case No. 10-C-1812. Board Exhibit No. 1-D. In the Matter of Crompton-Highland. Date 2/20/46. Pp. 3.

By HALLAM,
Official Reporter.

Date of Mailing: February 8, 1946.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled docu-

ment(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Crompton-Highland Mills, Inc.,
Griffin, Georgia.

Textile Workers Union of America, CIO,
75 Ivy Street, N. E.,
Atlanta, Georgia.

JIM T. HYDE.

Subscribed and sworn to before me this 11th day of February, 1946.

GRACE FOWLER,
Designated Agent.
NATIONAL LABOR RELATIONS BOARD.

Order, 2-8-46, 10-C-1812, Company.

Form 3811 Rev. 1-4-40.

Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this card.

1. (Signature or name of addressee) Crompton Highland Mills.

2. (Signature of addressee's agent—Agent should enter addressee's name on line One above) H. A. Prosford.

Date of delivery: Feb. 9, 1946.

Post Office Department, Official Business.

Penalty for Private Use to Avoid Payment of Postage, $300. (GPO)

Postmark of Delivering Office: Griffin, Ga., Feb. 9, 12 M, 1946.

Return to (Name of Sender): National Labor Relations Board, Tenth Region.

Street and Number, or Post Office Box: 300 Ten Forsyth Street Building, Atlanta, Georgia.

Registered Article No.: 435731.

Insured Pacrel No.: .....

Atlanta, Georgia.

Order, 2-8-46, 10-C-1812, Union.

Form 3811 Rev. 1-4-40.

Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee) T. W. U. A.

2. (Signature of addressee's agent—Agent should enter addressee's name on line One above) Ola Warren.

Date of delivery: 2-9, 1946.

Post Office Department, Official Business.

Penalty for Private Use to Avoid Payment of Postage, $300. (GPO)

Postmark of Delivering Office: Atlanta, Feb. 9, 5:30 PM, 1946, Ga., 4.

Return to (Name of Sender): National Labor Relations Board, Tenth Region.

Street and Number, or Post Office Box: 300 Ten Forsyth Street Building, Atlanta, Georgia.

Registered Article No.: 435732.

Insured Parcel No.: .....

Atlanta, Georgia.

ANSWER OF CROMPTON HIGHLAND MILLS, INC., RESPONDENT.

1. Received Feb. 13, 1946, National Labor Relations Board, Tenth Region.

17 United States of America.

Before The National Labor Relations Board,
Tenth Region.

Crompton Highland Mills, Inc.
and
Textile Workers Union of America.

Case No. 10-C-1812.

Rec'd. National Labor Relations Board. Case No. 10-C-1812. Board Exhibit No. 1-E. In the Matter of Crompton Highland. Date 2/20/46. Pp. 4.
By HALLAM,
Official Reporter.

Comes now Crompton Highland Mills, Inc., Respondent in the above captioned matter, and, for answer to the Complaint served upon it, respectfully shows:

I.

That the allegations of Paragraphs I, II, III, IV and V of said Complaint are admitted.

II.

Answering the allegations of Paragraph VI of said Complaint, Respondent admits that the National Labor Relations Board issued its Certification of Representatives as set forth and alleged in said paragraph, and admits that said Certification of Representatives was duly and properly issued. Except as so admitted, the alegations of said Paragraph VI of said Complaint are denied, for that Textile Workers Union of America has failed and refused to properly and in good faith exercise the rights, and perform the functions of the sole and exclusive collective bargaining agent and representative of the employees in the bargaining unit described in Paragraph V of said Complaint, but has, on the contrary, endeavored to use said rights, powers and authorities for its own selfish interests and advantages and against the interests of its principals, and has thereby forfeited the right to be, and is not now entitled to be recognized as, the sole and exclusive representative of all of the employees in said bargaining unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

III.

The allegations of Paragraph VII of said Complaint are denied; and, for further answer to said allegations,

Respondent shows that it commenced bargaining with said Union, as the sole and exclusive representative of all of the employees of Respondent in the bargaining unit described in Paragraph V of said Complaint, on August 31, 1945; that Respondent, at all times thereafter, bargained with the said Union in complete good faith and in a sincere effort to agree upon a contract; and that said Union failed and finally refused to bargain with Respondent in good faith. On November 8, 1945, the Union informed Respondent that the Union will not ever sign any contract which, irrespective of other provisions, does not include provisions, satisfactory to the Union, for the security of the Union and the check-off of the Union's dues from the wages of employees; and the Union, on November 8, 1945, broke off and terminated the bargaining negotiations. On or about November 27, 1945, a majority of the employees represented by the Union voted to strike. Thereafter, on December 19, 1945, at the request of employees represented by the Union, bargaining negotiations were resumed; but the Union again stated to Respondent that the Union will not ever agree to any contract which, irrespective of other provisions, does not include provisions, satisfactory to the Union, for the security of the Union and the check-off of the Union's dues from the wages of the employees; and the Union again, on December 19, 1945, broke off and terminated the bargaining negotiations.

IV.

The allegations of Paragraph VIII of said Complaint are denied; and, for further answer to said allegations, Respondent shows that during the bargaining which occurred prior to December 19, 1945, on which date the Union, for the second time, broke off and terminated the bargaining negotiations, the Union repeatedly demanded

a wage increase of five cents per hour for all employees in said bargaining unit. Each time said demand was made and repeated, Respondent explained to the Union that, and why, no wage increase was then appropriate or proper, but reminded the Union that Respondent had always been among the first of the comparably situated mills to make wage increases, and assured the Union that Respondent would make appropriate and proper wage increases whenever occasion for doing so should arise. Respondent proposed and offered to include in the contract for which Respondent and the Union were then negotiating provisions whereby the matter of wages could be reopened for further bargaining, so that closing the contract would not have precluded further bargaining with respect to wages, and Respondent amended said proposal in an effort to make it acceptable to the Union. The Union rejected all proposals of Respondent in this regard, and the Union broke off and terminated all bargaining negotiations on November 8, 1945, and again on December 19, 1945. Thereafter, on January 1, 1946, Respondent learned that other comparably situated mills, with which Respondent competes for labor, were about to make wage increases. Respondent therefore notified the Bargaining Committee of the Union that, consistently with Respondent's long-standing policy of being among the first to increase wages, Respondent wanted to make certain stated wage increases. The Local Union Committee expressed appreciation for and approval of the wage increases, and the wage increases were put into immediate effect. Respondent shows that, in order for Respondent to maintain necessary working forces, Respondent's wage rates must keep pace with the wage rates paid by comparable mills in the locality in which Respondent's plant is located; and that the wage increases which Respondent made on January 1, 1946, were substantially what the

Union had demanded prior to breaking off of negotiations on December 19, 1945.

V.

The allegations of Paragraphs IX, X, XI, XII and XIII of said Complaint are denied.

Wherefore, Crompton Highland Mills, Inc., Respondent, prays that said Complaint be dismissed and that Respondent be discharged from the charges made.

CROMPTON HIGHLAND MILLS, INC.,
By H. A. PICKFORD,
Manager.

Griffin, Georgia.

RALPH WILLIAMS,
Attorney at Law.

1425 Citizens & Southern Bank Building,
Atlanta, Georgia.

Georgia,
Spalding County.

Before the undersigned attesting officer, personally appeared H. A. Pickford, who being duly sworn, on oath says that the facts stated in the foregoing answer are true, and that he has been advised and believes that the conclusions of law stated in said answer are true and correct.

H. A. PICKFORD.

Sworn to and subscribed before me this 12 day of February, 1946.

ETTA J. PUGH,
(Seal), Notary Public, Spalding County, Georgia.

My Commission expires Nov. 7, 1946.

Georgia,
Fulton County.

I, Ralph Williams, do certify that I am Attorney at Law for Crompton Highland Mills, Inc., in the above captioned matter, and that I have this day mailed a copy of the foregoing answer to Textile Workers Union of America, 75 Ivy Street, N. E., Atlanta, Georgia.

This February 13, 1946.

RALPH WILLIAMS.

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21 ORDER DESIGNATING TRIAL EXAMINER.

X-566

File in Informal File.

United States of America,

Before The National Labor Relations Board.

In the Matter of
Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.

Case No. 10-C-1812.

It Is Hereby Ordered that Irving Rogosin act as Trial Examiner in the above case and perform all the duties

and Exercise all the powers granted to trial examiners under the Rules and Regulations—Series 3, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., February 20, 1946.

FRANK BLOOM,
(Frank Bloom)
Chief Trial Examiner.

(Seal)

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD.

NLB-1403
9/26/45.

File in Informal File.

22 United States of America,

Before The National Labor Relations Board.

In the Matter of
Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.
Case No. 10-C-1812.

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

It Is Hereby Ordered, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regu-

lations—Series 3, as amended, that Case No. 10-C-1812 be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., March 28, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

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23 AFFIDAVIT AS TO SERVICE.

Y-202 (6-1-45)

File in Informal File.

In the Matter of
Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.
Case No. 10-C-1812.

District of Columbia, ss.

I, Mary Moss, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 28th day of March, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Intermediate Report, order Transferring Case to the National Labor Relations Board,, and NLRB-

1401 to the following-named persons, addressed to them at the following addresses:

Mr. Ralph Williams,
1425 C. & S. Building,
Atlanta, Georgia.

Textile Workers Union of America,
Att: Mr. Kenneth Douty and Mrs. Clara Kanun,
75 Ivy Street, N. E.,
Atlanta, Georgia.

(Sgd.) MARY MOSS.

Subscribed and sworn to before me this 28th day of March, 1946.

(Sgd.) VINCENT THOMPSON,
Designated Agent for the National Labor Relations Board.

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24 REQUEST FOR ORAL ARGUMENT.

United States of America,

Before The National Labor Relations Board,
Washington, D. C.

In the Matter of
Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.
Case No. 10-C-1812.

Mr. Thomas T. Purdom, for the Board.

Mr. Ralph Williams, of Atlanta, Ga., for the Respondent.

Mr. Kenneth Douty, of Atlanta, Ga., and Mrs. Clara Kanun, of Griffin, Ga., for the Union.

An order transferring the above-entitled case to the National Relations Board having been entered on March 28, 1946, Crompton-Highland Mills, Inc., Respondent in the above-entitled case, comes now and respectfully requests permission to argue said case orally before the said Board.

This April 4th, 1946.

CROMPTON-HIGHLAND
MILLS, INC.,
By RALPH WILLIAMS,
Its Attorney at Law of Record.

I certify that I have this day mailed a copy of the foregoing request to the Regional Director of the National Labor Relations Board for the Tenth Region, Ten Forsyth Street Building, Atlanta, Georgia, and to Textile Workers Union of America, C. I. O., 75 Ivy Street, N. E., Atlanta, Georgia.

This April 4th, 1946.

RALPH WILLIAMS.

Copy.

Apr. 8, 1946.

National Labor Relations Board, Attn John E. Lawyer
Chief Order Section.

Re Crompton Highland Mills Inc and Textile Workers Union of America, Case Number Ten C One Eight One Two pursuant to Section 33 Article 11 Rules and Regulations as amended Crompton Highland Mills Inc re-

quests that the time for filing its statement of exceptions and brief in the above entitled case be extended to April 27, 1946, for the reason that Ralph Williams, its Attorney of Record, is engaged in emergency preparation for a trade mark injunction hearing and for the further reason that its local and general attorneys cannot confer with respect to said exceptions and brief until April 18. Reference is made to telephone conversation with Mr. Lawyer today.

CROMPTON HIGHLAND
MILLS, INC.,
RALPH WILLIAMS,
Its Attorney of Record.

Copy.

National Labor Relations Board.
N. L. R. B.

jel:rw

File in Informal File.

April 9, 1946.

National Labor Relations Board,
Atlanta, Georgia.

Ralph Williams, Esquire,
1425 C. & S. Building,
Atlanta, Georgia.

Mr. Kenneth Douty,
75 Ivy Street, N. E.,
Atlanta, Georgia.

Re: Crompton-Highland Mills, Inc., 10-C-1812, time for filing exceptions and briefs extended to April 23.

NATIONAL LABOR
RELATIONS BOARD.

RESPONDENT'S EXCEPTIONS TO INTERMEDIATE REPORT.

27 United States of America,

Before The National Labor Relations Board.
Washington, D. C.

WRR

File in Informal File.

In the Matter of
Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.
Case No. 10-C-1812.

Mr. Thomas T. Purdom, for the Board.

Mr. Ralph Williams, of Atlanta, Ga., for the Respondent.

Mr. Kenneth Douty, of Atlanta, Ga., and Mrs. Clara Kanun, of Griffin, Ga., for the Union.

Part One of Respondent's Exceptions,

(Pages 1 to 9.)

1. Respondent excepts to all of that portion of said Intermediate Report which is set forth under the caption "the incentive wage plan; collective bargaining negotiations relative thereto", commencing at page 74 and ending at page 87 of said Intermediate Report, and to all other portions of said Intermediate Report pertaining to the bargaining with respect to the incentive wage plan, on the following grounds, to-wit:

A. Because said portion of said Intermediate Report does not set forth or contain clear-cut, definitive findings of fact; but on the contrary sets forth, in confusion, arguments, conclusions, opinions and contentions of the Trial Examiner; and on the further ground that said arguments, conclusions, opinions and contentions of the Trial Examiner are not supported by the evidence which was adduced at the hearing before the Trial Examiner and are contrary to the evidence so adduced, and to the law and facts of the case.

B. Because said Trial Examiner omitted, failed and refused to make the following findings of fact which were demanded by the evidence adduced, to-wit:

1) That Respondent offered, in collective bargaining, to continue in effect, and to contract for fixed hourly rates of pay for all hourly-rated jobs and employees, and fixed rates of pay, per "point", or unit of production, for all incentive-rated jobs and employees. (Board Exhibit 2 and Sec. 1 of Respondent Exhibit 2.)

2) That Respondent, during collective bargaining, furnished the Union adequate and accurate information as to the hourly earnings of the incentive-rated jobs and employees by furnishing the Union accurate information as to the hourly earnings of the incentive-rated jobs and employees at illustrative "point hours" of production (Board Exhibit 2; Trans. pp. 168-169, 174, 194, 219); and that the Union, without even looking at said schedule, said that it was not satisfactory (Trans. 167).

3) That Respondent, during collective bargaining, and at the request of the Union, furnished the Union true and accurate and complete information as to the actual average hourly earnings of all incentive-rated employees, at

the rates of pay per point or unit of production then in effect and which Respondent proposed to continue in effect (Respondent Exhbit 1; Trans. pp. 178-179); and that the Union rejected said information, stated that it was not satisfactory, and refused to consider it, without having ever so much as looked at it (Trans. pp. 178-179).

4) That Respondent offered, in collective bargaining, to contract that the rates of pay and earnings on the incentive-rated jobs "will not be increased or reduced during the term of this Contract unless a general increase or reduction in wage rates is mutually agreed upon in collective bargaining". (Sec. 1 of Respondent Exhibit 2.)

5) That Respondent offered, in collective bargaining, to include in the Collective Bargaining Contract provisions whereby either party might reopen the Contract for further bargaining with respect to a general increase or reduction in rates of pay and wages. (Sec. 2 of Article II, p. 3 of Respondent Exhibits 3 and 4, and Sec. 2 of Respondent Exhibit 2.)

6) That Respondent explained to the Union, in collective bargaining, that Respondent had made two flat, across-the-board increases, of 5¢ per hour each, in all of its wage rates, during the tenure of the National War Labor Board; and explained further that Respondent's request for permission to work said increases into its schedule of incentive-wage rates had been refused and rejected by the National War Labor Board, and that the War Labor Board had directed that the amount of said increases, to-wit: 10¢ per hour, be added to the earnings of the incentive-rated employees on an hourly basis. (Trans. pp. 53, 168-169, 174, 195.)

7) That Respondent offered, in collective bargaining, to work said two 5¢ increases into the schedule of incentive rates, and endeavored to explain to the Union the method and effect of so doing; and that the Union rejected said offer and refused to listen to or consider said explanation. (Trans. pp. 34, 59, 185, 213.)

8) That Respondent repeatedly, carefully and correctly explained to the Union, during collective bargaining, that the rate of pay per point or unit of production under said incentive wage plan is the same, for each job or occupation, at every speed of production, which is to say, whether the employee produces at the rate of 60, 65, 70, 75, 80 or any other number of points per hour; except that a guaranteed minimum hourly rate is applied on a daily basis. (Int. Rep. p. 5, line 2; Trans pp. 155, 168-170, 190.)

9) That Respondent realized, and admitted in collective bargaining, that the Union could not intelligently bargain with respect to the rates per point or unit of production under said incentive wage plan without knowing the hourly earnings produced thereby; and that Respondent furnished the Union true and accurate information as to the earnings under said incentive wage plan at illustrative point hours and as to the actual average, straight-time hourly earnings of all of the incentive-rated employees (Board Exhibit 2; Respondent Exhibit 1; Trans. pp. 168-169, 174, 194-195, 219): and that the Union refused to consider the information so furnished. (Trans. p. 167, pp. 178-179.)

10) That Respondent admitted in collective bargaining that there is room for question as to whether the guaranteed hourly rates for the incentive-rated jobs bear a proper relationship to the potential and actual average offered in collective bargaining to endeavor to agree with

the Union upon a re-scheduling of the guaranteed hourly rates of pay. (Trans. pp. 48, 163-164, 203-204, 213, 214.)

11) That Respondent repeatedly, carefully and correctly explained to the Union, during collective bargaining, that what should constitute the "point", or unit of production, referred to as the "point standards", for the purposes of said incentive wage plan, is an industrial engineering problem which must be separately determined for each of the numerous occupations in the mill, and for each style and type of production for each occupation; and that said matter can only be determined by industrial engineering time and motion studies of each of the numerous jobs and operations in the mill. (Int. Rep. p. 9, lines 5-29; Trans. pp. 158, 160, 171, 175, 192, 193, 195, 196.)

12) That, to afford the Union full opportunity to obtain all necessary or desired information with respect to existing point standards and work assignments, so as to facilitate informed, intelligent collective bargaining with respect thereto, Respondent, in collective bargaining, offered to permit the Union, before completing the Collective Bargaining Contract, to send industrial engineers into Respondent's mill to make, and offered to afford said industrial engineers full opportunity for making, such time and motion studies, and such other industrial engineering studies, as the Union might deem necessary or desirable; and that the Union did not accept said offer and declined to avail itself of said opportunity and permission. (Int. Rep. p. 9, lines 5-29, p. 11, line 10; Trans. pp. 160-161, 196-197, 199.)

13) That, in order to avoid all unnecessary and undesirable delay in the completion and execution of the initial Collective Bargaining Contract, Respondent also

offered, in collective bargaining, to provide in the Collective Bargaining Contract, among other things, as follows, to-wit:

a) "The application and operation of the established point plan of incentive wage payment, or any part thereof, will be fully explained to and discussed with the employees, and with the Union as the collective bargaining representative of the employees, at any time and from time to time, whenever the Company shall be properly requested to do so; and full information as to the average hourly earnings of any employee or group of employees will, upon request, be furnished said employee or group of employees by the Company." (Sec. 1 of Article II, p. 3, Respondent Exhibits 3 and 4.)

b) ". . . it is expressly agreed that any point standard or work assignment heretofore or hereafter established by the Company may, upon request, be studied and checked by competent engineers designated and employed by the employees through the Union as their collective bargaining representative." (Sec. 3 of Article II, p. 3, Respondent Exhibit 3; Sec. 3, Article II, p. 4, Respondent Exhibit 4; Sec. 3, Respondent Exhibit 2.)

c) "The engineers designated by the Company and the employees (through the Union as their representative) shall, in mutual good faith and without prejudice or partiality, endeavor to reach agreement with respect to any questioned point standard or work assignment . . . (and) any firm agreement between the engineers designated by the Company and by the employees shall be reduced to written memorandum and shall be binding upon the Company and upon the employees unless and until a significant change in job specifications shall occur." (Sec. 3,

Article II, p. 4, Respondent Exhibits 3 and 4, and Sec. 3, Respondent Exhibit 2.)

d) "If the engineers designated by the Company and by the employees shall be unable to reach a mutually satisfactory agreement with respect to any point standard or work assignment heretofore or hereafter established by the Company, the parties shall mutually request the Director of the Conciliation Service of The United States Department of Labor to assign a competent, qualified, textile technician from the staff of said Conciliation Service to study the job and endeavor to conciliate the differences between the engineers designated by the Company and by the employees." (Sec. 3, Article II, p. 4 Respondent Exhibits 3 and 4, and Sec. 3 Respondent Exhibit 2.)

e) "If the parties, through their respectively designated engineers, shall still be unable to reach agreement with respect to any point standard or work assignment heretofore or hereafter established by the Company, either party may submit the issues as to the reasonableness and correctness of said point standard or work assignment to final and binding arbitration in the manner hereinafter provided . . . " (said proposal being followed by the proposal of detailed provisions for the final and binding arbitration of any and all point standard and work assignment disputes) (Sec. 3, pp. 3-4, Respondent Exhibit 2);

and that said Union rejected all of said offers and proposals by the Company, and that said Union rejected the amended counter-proposal which was submitted by the Company to the Union on November 7, 1945, without having ever read the amended counter-proposal. (Trans. pp. 58, 179-180.)

C. Because said Trial Examiner omitted, failed and refused to find that Respondent, by reason of the facts above set forth, bargained with said Union in complete good faith, in a sincere and genuine effort to make and agree upon a Collective Bargaining Contract, and in full performance of its obligations and duties under the National Labor Relations Act.

D. Because said Trial Examiner erred, contrary to the law and facts of the case, and specifically contrary to the facts above set forth, in finding and holding that Respondent failed and refused to bargain collectively with said Union in violation of Section 8(5) of the National Labor Relations Act.

E. Because the evidence which was adduced before the Trial Examiner demanded a finding, and because the Trial Examiner erred in omitting, failing and refusing to find, that the real and only substantial collective bargaining issue between the Respondent and the Union with respect to wages and the incentive wage plan arose from the Union's insistence that Respondent increase its wage rates so that the earnings for a 60 point hour, and the guaranteed minimum hourly rates, under the incentive wage plan, would equal the so-called "guide rates" established by the National War Labor Board and the "Textile Commission" thereof; and from Respondent's insistence that its incentive wage rates were already in excess of the "pattern" of wage rates established for the Southern Textile Industry by the National War Labor Board and the "Textile Commission" thereof, in that the incentive rates of Respondent were "set so as to yield average straight time hourly earnings" in excess of the so-called "guide rates" established by the National War Labor Board and the "Textile Commission" thereof.

(Board Exhibits 14, 15 and 16; Trans. pp. 30, 31, 98, 164-165, 186-187, 214, 230.)

2. Respondent excepts to the following quoted statement in said Intermediate Report (p. 6, lines 19-22) to-wit: "the union representatives were unable to formulate specific wage demands because of the complexity of the basic wage structure under the respondent's point plan", on the ground that said statement is contrary to the evidence adduced in that the Union did submit specific wage demands on November 8, 1945 (Board Exhibit 14), December 19, 1945 (Board Exhibit 15) and January 19, 1946 (Board Exhibit 16). (Trans. pp. 30-31, 98.)

3. Respondent excepts to the following statement by the Trial Examiner (p. 7, lines 32, 33) to-wit: "the respondent asserted that the production of average employees was equivalent to approximately 80 points per hour"; on the ground that said statement is contrary to the evidence, in that Mrs. Kanun testified (Trans. p. 37) that Respondent informed the Union that "the average point hour production for the mill was 75.6 points per hour".

4. Respondent excepts to the following quoted opinion of the Trial Examiner (p. 10, lines 45-49) to-wit: "nor is this obligation, in the opinion of the undersigned, satisfied by a proposal by the employer that the Union engage its own engineers or technicians to conduct its own investigation in order to determine the accuracy of the findings of the repsondent's engineers"; on the ground that said opinion of the Trial Examiner is contrary to law and incorrect.

5. Respondent excepts to the underscored sentences in the following quoted paragraph of said Intermediate Report (p. 11, lines 5-15) to-wit:

"The respondent's contention that it had proposed two alternatives to the Union is equally unreasonable. The first of these proposals was that the Union execute a contract adopting the existing wage rate structure which could be reopened upon the completion of the Union's engineering studies. The second, was that negotiations for a contract be suspended until the Union should have an opportunity to complete its time studies, when negotiations could be resumed. *While these proposals have a superficial appearance of reasonableness, closer examination reveals that both seek to continue the status quo as to wage rates, and to postpone and delay genuine collective bargaining."*

on the ground that the opinions and conclusions expressed by the Trial Examiner in said underscored sentences are not supported by any findings of fact and are contrary to law and fact.

6. Respondent excepts to the following quoted portion of said Intermediate Report (p. 11, lines 16-24), to-wit:

"As has already been indicated, and as the undersigned now finds, the Respondent was, during the bargaining negotiations, in possession of pertinent information regarding the 'point plan', including the method of determining the point, point standards, job specifications, and other information requested by the Union, essential to bona fide collective bargaining, and by failing and refusing to provide the same to the Union, upon request, the Respondent has failed and refused to bargain collectively"

on the ground that said purported finding of the Trial Examiner is not in truth a finding of fact, but is, on the

contrary, a mere statement of conclusions which are not supported by any findings of fact; and on the further ground that said conclusions and findings of the Trial Examiner are not supported by the evidence which was adduced at the hearing, and are contrary to the evidence so adduced and to the law of facts of the case.

Part Two of Respondent's Exceptions.

(Pages 10 to 12.)

1. Respondent excepts to all of that portion of said Intermediate Report which is set forth under the caption "Subsequent events; the unilateral wage increase", commencing at page 11 and ending at page 15 of said Intermediate Report, and to all portions of said Intermediate Report pertaining to the wage increase which was made on January 1, 1946, on the following grounds, to-wit:

A. Because said Trial Examiner erred in omitting, failing and refusing to find, although such a finding was demanded by the evidence adduced, that the Union, on October 18, 1945, November 8, 1945, and finally and completely on December 19, 1945, broke off and terminated all collective bargaining negotiations. (Trans. pp. 119, 177, 183, 224-225, 256-257, 283.)

B. Because said Trial Examiner erred by omitting, failing and refusing to find, although such findings were demanded by the evidence adduced, that Respondent, throughout the collective bargaining, fully explained and justified its refusal to grant the wage increase of 5¢ per hour, which was demanded by the Union; repeatedly stated to the Union that Respondent had always been among the first of the comparably situated mills to make wage increases; assured the Union that Respondent would

be among the first of the comparably situated mills to make any appropriate and proper wage increase whenever occasion for doing so should arise; and offered to include in the Collective Bargaining Contract provisions whereby either party could reopen the Contract for further bargaining with respect to wages; and that the Union, notwithstanding said explanations, assurances and proposals, refused to agree to a Collective Bargaining Contract and broke off and finally terminated all collective bargaining negotiations on December 19, 1945. (Trans. pp. 31, 55, 56, 57, 59, 165, 184; Sec. 2, Article II, p. 3, Respondent Exhibits 3 and 4; Sec. 2, Respondent Exhibit 2.)

C. Because said Trial Examiner erred in omitting, failing and refusing to find, although such a finding was demanded by the evidence adduced, that no collective bargaining negotiations were in progress on January 1, 1946, when Respondent made said wage increase. (Trans. pp. 183, 224-225, 256-257, 283.)

2. Respondent excepts to the following statement of the Trial Examiner (p. 13, lines 7-10) to-wit: "the preponderance of the credible evidence does not support the respondent's position that the union had, in effect, presented an ultimatum that no contract would be consummated which did not afford union security" on the ground that said statement is not supported by, and is contrary to the weight of the credible evidence adduced. (Trans. pp. 182, 184-185, 255, 256, 282, 283.)

3. Respondent excepts to the following quoted finding of the Trial Examiner (p. 13, lines 22-24), to-wit: "there is no substantial basis for concluding that the Union had abandoned negotiations at this time" on the ground that said finding is contrary to the weight of the credible evi-

dence which was adduced before the Trial Examiner. (Trans. pp. 119, 183, 224-225, 256-257, 283.)

4. Respondent excepts to the following quoted portion of said Intermediate Report (p. 15, lines 10-20, to-wit:

"Upon the basis of the foregoing, and upon the entire record, the undersigned concludes and further finds that, by failing and refusing to furnish the Union with essential and pertinent information relating to the respondent's wage structure under its 'point plan', job specifications, work assignments, and information appertaining thereto, and by granting its employees a unilateral wage increase on January 1, 1946, the respondent has from August 31, 1945 to December 19, 1945, and thereafter to date, including January 1, 1946, failed and refused to bargain with the union as the exclusive collective bargaining representative of the employees in the appropriate unit above described, and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed under the Act."

on the grounds that:

A. Said conclusions of the Trial Examiner are not supported by findings of fact.

B. Said conclusions of the Trial Examiner are contrary to the findings of fact which, as hereinabove set forth, should have been made by said Trial Examiner.

C. Said conclusions of the Trial Examiner, and said findings, if they can be called findings, of the Trial Examiner are not supported by the evidence adduced, and are contrary to the evidence adduced and to the law and facts of the case.

Part Three of Respondent's Exceptions.

(Pages 13 to 14.)

1. Respondent excepts to all portions of said Intermediate Report pertaining to the allegegd refusal of Respondent to bargain with said Union, on the following grounds, to-wit:

A. Because the evidence adduced before the Trial Examiner demanded a finding, and because said Trial Examiner erred in omitting, failing and refusing to find, that the Union, on November 8, 1945, and again on December 19, 1945, stated to Respondent that the Union will not ever agree to any contract which, irrespective of other provisions, does not include provisions, satisfactory to the Union, for the security of the Union and for the check-off of the Union's dues from the wages of the employees. (Trans. pp. 182, 184-185, 255, 256, 282, 283.)

B. Because the evidence adduced before the Trial Examiner demanded a finding, and because said Trial Examiner erred in omitting, failing and refusing to find, that the Union, while purporting to act as the collective bargaining agent and representative of the employees, proposed to Respondent that the Union would support the incentive wage plan if Respondent would agree to provisions, satisfactory to the Union, for the security of the Union and the check-off of the Union't dues from the wages of the employees; but stated that the Union would do everything in its power to discredit and destroy the incentive wage plan if Respondent would not contract for the security of the Union and would not agree to deduct Union's dues from the wages of the employees. (Trans. pp. 182-183, 255, 282, 325-326.)

C. Because the facts stated in the next above preceding two paragraphs demanded a finding and conclusion, and because the Trial Examiner erred in omitting, failing and refusing to find and conclude, that the Union, by bargaining for its own selfish interests and advantages, and against the interests of the employees as its principals, forfeited the right to be, and was not thereafter entitled to be, recognized as the sole and exclusive bargaining agent and representative of said employees.

2. Respondent excepts to the following quoted statement of the Trial Examiner (p. 14, lines 10-14), to-wit:

"This defense relates to the respondent's contention that by its insistence upon union security, the union was acting in derogation of the rights of minority employees who since they had voted against representation by the union in the Board election, were presumably opposed to union security."

on the ground that said statement of the Trial Examiner is an incorrect, inaccurate and insufficient statement of the contention of Respondent, the contention of the Respondent being more fully and accurately set forth in Exceptions 1, A., B., and C., next above.

3. Respondent excepts to the finding of the Trial Examiner which is set forth at lines 7-17 of page 94 of said Intermediate Report on the ground that said finding is contrary to the evidence adduced and to the law and facts of the case and contrary to the findings which, as set forth above, should have been made by said Trial Examiner.

Part Four of Respondent's Exceptions.

(Pages 15 to 17.)

1. Respondent excepts to the following quoted statement of the Trial Examiner (p 15, lines 43-50), to-wit:

"The implication of aspersion and villification of any labor organization which attempts to bargain collectively for all employees, without racial discrimination, as well as disparagement of members of such an organization, is apparent. The effect of such a statement made by an overseer, whose relationship to his subordinate employees connotes employer attitude, is inescapable. It is one method of discrediting Unionism and its underlying purpose."

on the ground that said statement is not a finding of fact, but is a mere statement of the conclusions and opinions of the Trial Examiner, and on the further ground that said conclusions and opinions of the Trial Examiner are not supported by, and are contrary to the evidence adduced and are contrary to the law and facts of the case.

2. Respondent excepts to the following quoted statement of the Trial Examiner (p. 16, lines 32-40), to-wit:

"Although the recognition clause in the respondent's proposed contract recognized the Union as representative of the employees in the unit, the respondent's insistence upon designating the parties to the contract as 'Employer and Employees in the hereinafter described Bargaining Unit as, and hereinafter called, Employees', indicates an intent upon the part of the respondent to accord the union only qualified recognition. This position may have re-

sulted from the respondent's erroneous conception of the status of the majority representative, already discussed."

on the ground thas said statement is not a finding of fact, is not pertinent to the matter there being considered, and is a mere gratuitous and wholly irrelevant and erroneous expression of the opinion of the Trial Examiner, and is contrary to the law and facts of the case.

3. Respondent excepts to the following quoted statement of the Trial Examiner (p. 16, lines 48-50), to-wit:

"Viewed in this light, Ethridge's statement to the chairman of the negotiating committee assumes adder significance and supports the conclusion that the statement was intended to further disparage and discredit the Union and its representatives, and to undermine it with the employees by charging the Union with subordinating the interests of the employees to its own. The undersigned so finds."

on the ground that said conclusions and pretended findings are not supported by any evidence; or by any findings of fact, and are contrary to the evidence and to the law and facts of the case.

4. Respondent excepts to all portions of said Intermediate Report relative to the alleged statement by Fred Washington, on the grounds that the evidence demanded findings, and said Trial Examiner erred in omitting, failing and refusing to find, that:

A. Said statement was simply a single, isolated expression of the opinion of one individual person.

B. Said statement did not reflect, and was not construed as reflecting the attitude of Respondent.

C. Said statement was too trivial and inconsequential to be made the basis for any finding of unfair labor practice.

D. Said statement did not intimidate, restrain or coerce any employee in any manner.

E. Said statement was a mere expression of individual opinion, fully within the constitutional guarantee of free speech .

5. Respondent excepts to all portions of said Intermediate Report relative to alleged statements by Frank Etheridge, on the grounds that the evidence demanded findings, and said Trial Examiner erred in omitting, failing and refusing to find, that:

A. Said statements were merely expressions of opinions and contentions, with respect to bargaining contentions and insistences, made in private conversation between bargaining representatives of the parties.

B. The expression by Frank Etheridge of said contentions and opinions was fully within the constitutional guarantee of the right of free speech.

C. Collective bargaining cannot exist, and certainly cannot succeed, if the representatives of one party are prohibited from expressing to the representatives of the other party their opinions and contentions with respect to the bargaining contentions and insistences of the other party.

D. Said statement did not intimidate, restrain or coerce any employee in any manner.

6. Respondent excepts to the conclusions and findings of the Trial Examiner which are set forth at page 17, lines 1-10 of said Intermediate Report on the grounds that said conclusions and findings are not supported by, and are contrary to the evidence adduced, and are contrary to the law and facts of the case.

Part Five of Respondent's Exceptions.

(Pages 18 to 19.)

1. Respondent excepts to that portion of said Intermediate Report which is set forth (p. 98, lines 17-23) under the caption "The effect of the unfair labor practices upon commerce" on the ground that said conclusions of the Trial Examiner are not supported by findings of fact, are contrary to the evidence adduced, and to the facts which, as hereinabove set forth, should have been found by the Trial Examiner, and are contrary to the law and facts of the case.

2. Respondent excepts to the following quoted portion of said Intermediate Report (p. 99, lines 19-28) to-wit:

"Despite the absence of and evidence of widespread anti-union animus or hostility, the record sufficiently indicates, as has been shown, a reluctance or refusal on the part of the respondent to accord the Union complete and unqualified recognition as the exclusive bargaining representative, and an intention of disparaging and discrediting the Union and its representatives, as indicated by the statements of Overseer Washington in connection with the

election, and by Personnel Director Ethridge respecting the motives of Union Director Douty."

on the ground that said statements and conclusions of the Trial Examiner are not supported by, and are contrary to the evidence adduced and contrary to the law and facts of the case.

3. Respondent excepts to Paragraphs 3 (p. 100, lines 23-29) 4, 5 and 6, p. 101, lines 1-16) of the "Conclusions of Law" as set forth in said Intermediate Report, and to each of said "Conclusions of Law" separately, on the ground that said "Conclusions of Law" are contrary to law and contrary to the law and facts of the case.

4. Respondent excepts to all of the "Recommendations of Trial Examiner", as set forth at pages 101 to 104 of said Intermediate Report, and to each of said "Recommendations" separately, on the ground that said "Recommendations" are not justified or authorized by, and are contrary to the evidence adduced, and contrary to the law and facts of the case.

5. Without limiting the generality of the next above preceding exception, Respondent specifically excepts to the recommendation (p. 102, lines 10-12) that Respondent cease and desist from "making any other changes in wage rates of the employees in the aforesaid unit without consulting the said Union"; and specifically excepts to the recommendation (p. 103, lines 9-13) that Respondent "consult with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, prior to . . . making any other changes in wage rates of the employees in the aforesaid unit", on the grounds that said recommendations are not attuned to, and are not justified or warranted by, any issue or contention in said case, or

any evidence adduced before the Trial Examiner, or any finding made by the Trial Examiner, and are contrary to the law and facts of the case.

Wherefore Respondent prays that these its exceptions to said Intermediate Report be considered and sustained, that the findings, conclusions and recommendations of the Trial Examiner be corrected and reversed, and that the complaint in the above-entitled case be dismissed.

Respectfully submitted,

CROMPTON-HIGHLAND
MILLS, INC.
By RALPH WILLIAMS,
Its Attorney-at-Law Of
Record.

1425 Citizens & Southern Bank Building,
Atlanta 3, Georgia.

I do hereby certify that I have this day mailed copy of the foregoing Exceptions to the Regional Director of the National Labor Relations Board for the Tenth Region, 10 Forsyth Street Building, Atlanta, Georgia, and to Textile Worker's Union of America, C. I. O., 75 Ivy Street, N. E., Atlanta, Georgia.

April 20, 1946.

RALPH WILLIAMS.

Copy.

Apr. 23, 1946.

National Labor Relations Board.

Re: Compton Highland Mills Griffin Georgia Case No. 10 C 1812. Request time to reply to Respondents brief on Intermediate Report to May 15 1946.

CLARA KANUN,
Representative, Textile Union
of America.

Copy.

49 File in Informal File.

National Labor Relations Board.
N. L. R. B.

cm:rw

April 24, 1946.

Clara Kanun, Representative,
Textile Union of America,
75 Ivy Street, N. E.,
Atlanta, Georgia.

Re: Crompton-Highlands Mills, Inc., 10-C-1812, the Board has today considered and denied your request until May 15 to file reply to Respondent's brief.

NATIONAL LABOR RELATIONS BOARD.

50 NOTICE OF HEARING.

File in Informal File.

NLB-1402 3 24 45

National Labor Relations Board,
Washington, D. C.

In the Matter of:
Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO.
Case No. 10-C-1812.

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, June 25, 1946, at 10:30 a. m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., May 23, 1946.

JOHN E. LAWYER,
Chief, Order Section.

51 AFFIDAVIT AS TO SERVICE

File in Informal File.

Y-202 (6-1-45)

In the Matter of:

Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

District of Columbia, ss.

I, Edward S. McGovern, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 23rd day of May, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Notice of Oral Argument to the following-named persons, addressed to them at the following addresses:

Mr. Ralph Williams,
1425 C. & S. Bank Building,
Atlanta, Georgia.

Textile Workers Union of America,
Att.: Mr. Kenneth Douty and Mrs. Clara Kanun,
75 Ivy Street, N. E.,
Atlanta, Georgia.

(Sgd.) EDWARD J. McGOVERN.

Subscribed and sworn to before me this 23rd. day of May, 1946.

(Sgd.) MERLE J. SMITH,
Designated Agent for the National Labor Relations Board.

52 ORAL ARGUMENT.

File in Informal File.

Z-1259

National Labor Relations Board.

Date: June 25, 1946.

Time Began: 10:45.

Time Ended: 11:55.

Board Members Present:

1. Mr. Herzog.

2. Mr. Reilly.

3. Mr. Houston.

Case No. 10-C-1812. Name: Crompton-Highland Mills, Inc.

Appearances:

(A) Of Counsel to the Board:

Review Attorney: Mr. Bisgyer.

(B) For the Company:

Name: Mr. Ralph Williams.

Address: 1425 C. & S. Bank Bldg., Atlanta, Georgia.

Name: .....

Address: .....

(C) For the Union: Textile Workers Union of America, CIO.

Name: Mrs. Clara Kanun.

Address: 75 Ivy Street, N. E., Atlanta, Georgia.

Name: .....

Address: .....

(D) For the Intervener:

Name: .....

Address: .....

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53 DECISION AND ORDER.

700-D

United States of America.

Before The National Labor Relations Board.

In the Matter of:

Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

Mr. Thomas T. Purdom, for the Board.

Mr. Ralph Williams, of Atlanta, Ga., for the respondent.

Mr. Kenneth Douty, of Atlanta, Ga., and *Mrs. Clara Kanun*, of Griffin, Ga., for the Union.

Mr. Paul Bisgyer, of counsel to the Board.

On March 25, 1946, Trial Examiner Irving Rosgosin issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. On June 25, 1946, the Board heard oral argument at Washington, D. C., in which the respondent and the Union participated.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications and exceptions noted below.

1. The Trial Examiner found that the respondent, in violation of Section 8 (1) and (5) of the Act, failed to bargain collectively with the Union as the statutory representative of the respondent's employees by refusing to furnish the Union with certain detailed information relating to the incentive wage plan and by granting a wage increase to its employees without consulting the Union. Although we agree with the Trial Examiner's conclusion, we, however, rest our determination solely on the latter ground. As fully discussed in the Intermediate Report, the respondent, during the course of negotiations with the Union, refused to accede to the Union's wage demands and it was not until their last conference on December 19, 1945, that the respondent made its first and only counterproposal of approximately 1 to 1½ cents an

hour raise, which the Union rejected. Thereafter, the respondent made no further effort to settle the wage dispute but, instead, on January 1, 1946, only 12 days later, granted its employees a substantially larger increase than that previously offered to the Union, without consulting the Union or affording it an opportunity to negotiate with respect thereto. In our opinion, such action taken as soon after the Union was attempting through the bargaining process to reach an agreement with the respondent, among other things, on wages, clearly shows that the respondent was not acting in good faith during the negotiations, and is manifestly inconsistent with the principle of collective bargaining. Nor are we impressed with the respondent's attempted justification for its action on the ground that the Union broke off negotiations on December 19 and, therefore, that the respondent never proposed to the Union as a possible basis of agreement a wage increase comparable to that granted on January 1, 1946. Moreover, the record fails to support the respondent's contention that the Union's representatives assumed an unequivocal position at the last meeting which foreclosed further bargaining concerning wages or other terms or conditions of employment. Under these circumstances, we find, as did the Trial Examiner, that the respondent, by its action with respect to the wage increase, failed to perform its statutory duty to bargain collectively with the Union and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in the Act.

With respect to the respondent's refusal to comply with the Union's request for certain information concerning its Point Plan, we, unlike the Trial Examiner, are not persuaded that, on the facts of this case, the respondent thereby manifested bad faith. In view of the respondent's invitation to the Union to conduct its own engi-

neering studies at the plant, and under all the circumstances of this particular case, including the evidence of substantial counter-proposals on many other issues, we find that this part of the respondent's conduct was not violative of Section 8 (5) of the Act. The effect of such conduct in a different context is not before us for decision here.[1]

2. We also disagree with the Trial Examiner that the record herein warrants a finding that the derogatory remark of one of the respondent's supervisory employees concerning the election conducted by the Board at the plant, and the Personnel Director's statement to the chairman of the local bargaining committee, criticizing a union official's attitude allegedly exhibited during the contract negotiations, amounted to such interference, restraint, and coercion as are contemplated by Section 8 (1) of the Act. Accordingly, we shall dismiss the complaint in this respect.

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54 ORDER.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the

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[1] *The Aluminum Ore* case (*Aluminum Ore Company v. N. L. R. B.*, 131 F. (2d) 485, 487) and the *Sherwin-Williams* case (34 N. L. R. B. 651, enf'd 130 F. (2d) 255 (C. C. A. 3)) which are cited by our dissenting colleague for a contrary conclusion are not really in point since in those cases, unlike this one, the Company refused any information with respect to its wage schedule. In this case both parties were familiar with the schedule of rates and current payments under the point system, and the Company was willing to make substantial concessions in the wages to agree with the Union. That the Company had a legal duty to yield to its demand would seem to imply that the requirement to bargain collectively means to agree—a theory emphatically rejected by the Supreme Court in *Jones & Laughlin* (*N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 45).

respondent, Crompton-Highland Mills, Inc., Griffin, Georgia, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of the respondent's production and maintenance employees at the Griffin plant, including watchmen, but excluding office, clerical, technical, and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, by taking action, without prior consultation with said organzation, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Textile Workers Union of America, CIO, to bargain collectively with it as the representative of its employees in the appropriate unit described above.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile workers Union of America, CIO, as the exclusive representative of all its employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant at Griffin, Georgia, copies of the notice attached hereto, marked "Appendix A". Copies

of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region (Atlanta, Georgia), in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 21 day of August, 1946.

PAUL M. HERZOG,
Chairman.
GERARD D. REILLY,
Member.
(Seal) NATIONAL LABOR RELATIONS BOARD.

Crompton-Highland Mills, Inc., 10-C-1812.

JOHN M. HOUSTON, dissenting in part:

During the course of negotiations, the Union requested the respondent to produce certain data pertaining to a complex wage incentive plan which was being used by the respondent to establish wage rates for employees in the unit for which the Union had been certified as exclusive bargaining representative. The essentials of the plan consisted of a time study program under which money values were allocated by use of a point system to component parts of a given operation in order to as-

certain the worth of the job in wages. The effect of the plan, it was admitted by the respondent, was the source of dissatisfaction among a number of employees, and the Union's request for the data was based, in part, upon a desire to determine whether this dissatisfaction was justified. In addition to the desire of the Union to service its constituents in this connection, the record is clear that the Union's interest in the plan derived from its concern that continued operation of the plan would mean unilateral determination of basic wage schedules by the respondent—a matter which vitally challenged the legitimate exercise by the Union of its rights as exclusive representative of these employees. Conceding that wages, and the methods employed to arrive at wage rates, are proper subjects of collective bargaining, the respondent nevertheless refused to produce the data. Initially it claimed that the production of its records, etc., would "mess up [the] bargaining," and "simply would muddle the issues." It also argues, at one point, that production of the data involved the handling of such a voluminous mass of detail that it would be almost physically impossible to comply with the Union's request. However, the plan must have grown in bulk rather abruptly after the certification of the Union since the respondent had no difficulty in transporting so much of it to the War Labor Board as would support its wage contentions in that forum 4 months earlier. It is noted that the Union requested substantially what had been provided with ease by the respondent at that time.

But respondent has now advanced, as its most serious contention in defense of its refusal, that it offered the Union an opportunity to obtain the information by engineering studies to be conducted by the Union at the plant. Its contention in this respect would appear to have the practical result of permitting the respondent to affect basic wage changes by the continued use of its

own plan with the concession that such wage determinations might, at some future date, be modified, after prolonged discussion with the Union, provided accommodation of the Union's point of view with the respondent's fait accompli could be reached. I consider that such a course of conduct seriously reflects upon the respondent's good faith, and that the respondent's position is "inconsistent with the principle of collective bargaining" as stated in the *Aluminum Ore Company* case,[1] where in an analogous situation the Court held that:

> . . . [Collective bargaining] contemplates exchange of information, ideas and theories, in open discussion . . . we do not believe that it was the intent of Congress in this legislation that, in the collective bargaining prescribed, the union, as represenative of the employees, should be deprived of the pertinent facts constituting the wage history of its members . . . *including full information as to the work done by the respective employees and as to their respective wages in the past* . . . (Underscoring [italics] supplied.)

Nor does the respondent's invitation to the Union to make its own time study excuse the respondent's fault. As I have indicated above, the consequence of the suggestion obviously involves such delays as to forestall the possibility of early agreement and thus to perpetuate and augment the dissatisfaction engendered in the employees by continued ignorance on their part of the factors upon which their wages are dependent. Indeed, this Board in the *Sherwin-Williams Company* case,[2] refused to permit an employer to escape the duty to bargain by extending an invitation to the Union to obtain its own information. The above considerations constrain

[1] *Aluminum Ore Company v. N. L. R. B.*, 131 F. (2d) 485, 487.
[2] 34 N. L. R. B. 651, enf'd 130 F. (2d) 255 (C. C. A. 3).

me to disagree with my colleagues insofar as this aspect of the case is concerned.

Signed at Washington, D. C., this 21 day of August, 1946.

JOHN M. HOUSTON,
Member.
NATIONAL LABOR RELATIONS BOARD.

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57 APPENDIX A

Notice to All Employees.

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We Will Not make any changes with respect to rates of pay, wages, hours of employment, or other conditions of employment of our employees in the bargaining unit described below, without prior consultation with Textile Workers Union of America, CIO.

We Will Not in any manner interfere with the efforts of Textile Workers Union of America, CIO, as the exclusive representative of our employees in the unit described below, to bargain collectively with us.

The bargaining unit is: All production and maintenance employees at our Griffin plant, including watchmen; but excluding office, clerical, technical and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

CROMPTON-HIGHLAND
MILLS, INC.
(Employer.)

By .....
(Representative.) (Title.)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

59 INTERMEDIATE REPORT.

IR-1232

United States of America.

Before The National Labor Relations Board,
Trial Examining Division,
Washington, D. C.

In the Matter of:

Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

Mr. Thomas T. Purdom, for the Board.

Mr. Ralph Williams, of Atlanta, Ga., for the respondent.

Mr. Kenneth Douty, of Atlanta, Ga., and *Mrs. Clara Kanun*, of Griffin, Ga., for the Union.

Statement of the Case.

Upon a second amended charge duly filed by Textile Workers Union of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated January 31, 1946, against Crompton-Highland Millls, Inc., herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent (1) since on or about August 31, 1945, has failed and refused to bargain collectively with the Union notwithstanding that the Union has at all times since August 13, 1945, been the representative of a majority of the employees in an appropriate unit; (2) since on or about August 2, 1945, has vilified, disparaged, and expressed disapproval of the Union; and (3) by the foregoing acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent, in its answer filed February 13, 1946, admitted the allegations concerning the nature and extent of the operations of its business, and the certification of the Union as the exclusive representative of its employees in the appropriate unit. It alleged, however, that the Union thereafter forfeited the right to represent the employees as collective bargaining agent by reason of its failure to perform and exercise properly the functions of such agent. The respondent further denied the commission of any unfair labor practices.

Pursuant to notice a hearing was held at Griffin, Georgia, on February 20 and 21, 1946, before Irving Rogosin, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its representatives. All participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the commencement of the hearing counsel for the Board moved for a "finding and conclusion of a refusal to bargain" based upon the pleadings. Ruling on the motion was reserved. In view of the disposition of the case hereinafter made, it is unnecessary to pass upon

it. At the conclusion of the hearing motions of counsel for the Board and for the respondent to conform the pleadings to the proof with respect to formal matters not affecting the substantive issues were granted without objection. All parties were afforded an opportunity to argue orally upon the record and to file briefs with the undersigned. No briefs have been received.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact.

I. The business of the respondent.

Crompton-Highland Mills, Inc., a Georgia corporation having its principal office and place of business in Griffin, Georgia, is engaged in the manufacture, sale and distribution of cotton cloth, including corduroy, velvet, velveteen, jungle cloth and related products. During the year 1945, it purchased raw materials consisting of cotton and other items valued in excess of $200,000, of which more than 50 percent was shipped to its plant in interstate commerce from states outside the State of Georgia. During the same period, the respondent manufactured cotton cloth valued in excess of $250,000, more than 90 percent of which was shipped from its plant in interstate commerce to states outside the State of Georgia.

II. The organization involved.

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. The unfair labor practices.

A. The refusal to bargain

1. The appropriate unit and representation by the Union of a majority therein.

The Board, on August 13, 1945, following its Decision and Direction of Election,[1] and an election conducted on August 1, 1945, certified the Union as the exclusive collective bargaining representative of the employees in the unit found to be appropriate. The respondent, in its answer, admits the allegations of the complaint concerning the appropriateness of the unit previously found by the Board. The undersigned finds, therefore, upon the basis of the foregoing, that all production and maintenance employees, including watchmen, employed at the respondent's plant, but excluding office, clerical, technical, and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The respondent's answer further admits that the Union was duly and properly certified by the Board on August 13, 1945, as the exclusive collective bargaining representative of the employees in the appropriate unit. The undersigned finds, upon the basis of the foregoing, and the entire record, that the Union was, on August 13, 1945, and has been, at all times material thereafter to and in-

[1] *Matter of Crompton-Highland Mills*, 62 N. L. R. B. 1346.

cluding December 19, 1945,[2] the duly designated representative of a majority of the employees in the said appropriate unit, and that by virtue of Section 9 (a) of the Act, was, and has been from August 13, 1945, to and including December 19, 1945, the exclusive representative of all the employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

2. The refusal to bargain.

The complaint alleges that (a) on or about August 31, 1945, the Union requested the respondent to bargain collectively with it as the exclusive representative of the employees in the appropriate unit, and that from that date until on or about December 19, 1945, and thereafter, no agreement has been reached concerning rates of pay and wages of employees in the appropriate unit by reason of the respondent's refusal to bargain in good faith; and (b) on or about January 1, 1946, the respondent, by unilaterally granting wage increases to the said employees, refused to bargain collectively with the Union as the exclusive representative of the employees in the said unit. The first ground for the alleged refusal to bargain is based upon the assertion that the Union, at various times during its collective bargaining negotiations with the respondent, requested certain relevant and essential information with respect to the respondent's wage rate structure, and that the respondent failed or refused to furnish adequate information which would afford the Union a basis for bargaining with respect to rates of pay and wages. The second ground, namely, the granting of unilateral wage increases, is discussed in further detail hereinafter.

[2] The respondent's contention that the Union, by its conduct subsequent to August 13, 1945, "forfeited" its right to represent the employees in the appropriate unit as exclusive representative, is discussed hereinafter.

(a). The incentive wage plan; collective bargaining negotiations with regard thereto.

In June 1942, prior to the advent of the Union, the respondent introduced an incentive wage plan in its plant. This plan, installed by a firm of industrial engineers, was colloquially known, and is generally referred to in the record, as the "Point Plan".[3] At its inception, not all production jobs were immediately brought under the plan. It was contemplated, however, that the plan should gradually be applied to other production jobs upon the completion of engineering studies relating to those jobs.[4] Jobs, therefore, fall into two broad classifications, incentive, and hourly rated jobs. The point plan applies only to the incentive rated jobs with which we are here concerned.

In order to consider what transpired during the collective bargaining conferences, and to comprehend the contentions of the parties, it may be well to examine briefly the basic elements involved in the point plan, as disclosed by the record. Under the plan, a point represents a unit of production, and is defined by the respondent as "the amount of work produced in one minute by an average normal worker [on a particular job] operating under non-incentive or day-work conditions, plus allowances covering personal time, fatigure, and such minor delays and interruptions as are inherent in the job in question". The industrial engineering firm employed by the respondent, after conducting time and motion studies of the jobs involved, determines the value of a

[3] No comprehensive analysis, or attempt at appraisal of this system, will be undertaken. Only the salient features of the plan relating to the alleged refusal to bargain will be discussed.

[4] Approximately one-third of the employees were under the point plan at the time of the hearing, and, although the respondent is gradually expanding the coverage of employees under the plan, some jobs, principally maintenance, will never be brought under the plan.

point in terms of work requirements for each incentive rated job, and compiles a table of "point standards" reflecting this detailed data. A wage rate is then established for the point for each incentive rated job. The daily production of each employee is measured against these point standards and then converted into points. To determine the employee's daily earnings in terms of money, the total number of points earned by the employee in a day is then multipied by the rate per point. Thus, by way of illustration, the rate of a picker tender was fixed at $.007 per point. An employee producing the equivalent of 60 points per hour, would earn $.007 x 60, or $.42; 75 points per hour, $.007 x 75, or $.525; 80 points per hour, $.007 x 80, or $.56. The rate per point, or unit of production, for each job remains constant, regardless of the speed at which an employee works. Each employee under the plan is, however, guaranteed a mini-

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[5] Illustrative of such a "point standard", is the following table submitted by the respondent to the War Labor Board in April, 1945, at the time it applied for permission to extend the point plan to the weavers. The production standards used in wage payment are calculated from "basic element standards" combined according to the requirements of the particular job. These elements do not change as long as "the fundamental nature" of the job does not change. As illustrated with respect to the Weavers, in the information furnished in connection with the Form #10, the following elements are involved in this job:

a)—Fix a broken filling thread	.412	point per occurrence
b)—Fix a broken warp thread at the front of the loom	.770	point per occurrence
c)—Fix a broken warp thread at the back of the loom	1.054	point per occurrence
d)—Fix a "slam-off" (also called a bang-off, or mechanical stop ..	.236	point per occurrence
e)—Remove finished roll of cloth from loom	3.278	point per occurrence
f)—Walk past the front of a loom, for any purpose	.08596	point per occurrence
g)—Walk past the back of a loom, for any purpose	.17193	point per occurrence
h)—Miscellaneous small jobs incidental to running a loom	.2848	point per 10,000 picks, any loom, any style*

* Elsewhere, the supplemental information recites:

The unit of production in a Weave Room is the "pick", defined as the function of a loom in placing one filling thread. For convenience, the unit used here is 10,000 picks.

opportunity to make its own studies, the respondent contends that it has abundantly fulfilled any obligation to bargain imposed under the Act. As a corollary, it contends that any records, job specifications, production records or details of the incentive plan which might have been furnished the Union, would have afforded nothing more than an opportunity to verify the mathematical computations of its engineers, but could not possibly have assisted the Union in determining whether the point standards or work assignments were "correct". This, apart from the contention made by the respondent that the records concerning the respondent's incentive wage plan were so voluminous as to make it impossible to furnish information in the detail required by the Union.

With respect to the latter contention, it is sufficient to point out that in April, 1945, about 4 months prior to certification of the Union, and the commencement of negotiations between the Union and the respondent, the latter had filed with the Regional Office of the War Labor Board a Form 10 application, accompanied by supplementary information, for permission to extend the wage incentive plan to three groups of workers in the weave room. The supplementary information accompanying the application, describing in detail the principles involved in the plan, definition of the point, job specifications, etc., as well as the answer to Question 9 on the application,[14] furnished substantially the type of

[14] The answer to Question 9:

Weave Room weavers and loom fixers. "All production is measured in points, a point being the amount of work produced in one minute by an average normal worker operating under non-incentive or day-work conditions, plus allowance covering personal time, fatigue, and inherent incidental delays. For 60 points of work or less per hour the operator is paid the job base rate. Above 60 points of production per hour a proportionate premium is paid—i. e., 66 points of work per day pays 10 percent above job base rates, etc. Each style of cloth has its own point standard per unit of production. But the above description best answers this question."

The supplementary information also indicated job specifications for the jobs involved, past earnings, average earnings, and the like.

information which the Union subsequently sought with respect to all the incentive rated jobs.[14] The only explanation offered by the respondent for failing to furnish the information contained in these documents, admittedly in its possession at the time of the Union's request for information of this character, was that it had not occurred to the respondent to do so at the time.

Without exploring the ramifications of the respondent's "point plan", it is apparent that it involved a complicated method of establishing a wage rate structure. The duty of an employer, in bargaining concerning wage rates, to disclose to the exclusive bargaining representative of the employees all pertinent information, including job classifications, specifications, past wage rates, must be recognized if the hazards of industrial strife are to be replaced by collective bargaining. Indeed, experience in industrial relations has demonstrated that industries in which collective bargaining has been well-established and in which the greatest measure of stability has prevailed, have been those in which access to the books, production, payroll records and the like have been granted the collective bargaining representative.[15]

As was said by the Circuit Court of Appeals for the Seventh Circuit in the *Aluminum Ore* case:[16]

> . . . we do not believe that it was the intent of Congress in this legislation that, in the collective bargaining prescribed, the union, as representative of the employees, should be deprived of the pertinent facts constituting the wage history of its members. We can con-

[14] The record discloses that the Union was unaware, during its negotiations, that the respondent had filed this Form #10 application, and that it did not discover this and learn of its contents until the time of the hearing.

[15] See Pierson, Collective Bargaining Systems (1942) 32.

[16] *Aluminum Ore Company v. N. L. R. B.*, 131 F. (2d) 485, 487 (C. C. A. 7), enf'g 39 N. L. R. B. 1286.

ceive of no justification for a claim that such information is confidential. Rather it seems to go to the very root of the facts upon which the merits were to be resolved. In determining what employees should receive increases and in what amounts; it could have been only helpful to have before the bargainers the wage history of the various employees, including full information as to the work done by the respective employees and as to their respective wages in the past, their respective increases from time to time and all other facts bearing upon what constituted fair wages and fair increases.

Especially is the necessity for such disclosure apparent where, as here, the wage rate structure is based upon a highly technical system, devised by industrial engineers, and requiring specialized studies. Nor is this obligation, in the opinion of the undersigned, satisfied by a proposal by the employer that the Union engage its own engineers or technicians to conduct its own investigation in order to determine the accuracy of the findings of the respondent's engineers. Apart from expense which this course would entail, such a study, which the respondent's experience has already demonstrated has necessitated the gradual application of the plan to various departments, would unnecessarily delay the process of collective bargaining. Moreover, since "each style of cloth has its own point standard per unit of production",[17] and since styles of cloth vary according to the respondent's production requirements, such a course would require frequent engineering studies with resultant delay and confusion.

The respondent's contention that it had proposed two alternatives to the Union is equally unreasonable. The first of these proposals was that the Union execute a

[17] See footnote 13.

contract adopting the existing wage rate structure which could be reopened upon the completion of the Union's engineering studies. The second, was that negotiations for a contract be suspended until the Union should have an opportunity to complete its time studies, when negotiations could be resumed. While these proposals have a superficial appearance of reasonableness, closer examination reveals that both seek to continue the status quo as to wage rates, and to postpone and delay genuine collective bargaining.

As has already been indicated, and as the undersigned now finds, the respondent was, during the bargaining negotiations, in possession of pertinent information regarding the "point plan", including the method of determining the point, point standards, job specifications, and other information requested by the Union, essential to bona fide collective bargaining, and by failing and refusing to provide the same to the Union, upon request, the respondent has failed and refused to bargain collectively.

(b) Subsequent events; the unilateral wage increase.

Following the conference of October 18, the union local met and voted to petition the Secretary of Labor for a strike vote under the Smith-Connally Act. On October 22, the Union notified the Secretary of Labor and other appropriate agencies, including the Board, of the existence of a dispute with the respondent, indicating the issues involved. A strike vote was subsequently taken on November 27, which resulted in 369 ballots in favor of, and 120 opposed to a strike.

On November 7, a conciliator of the Department of Labor called a conference of the parties at Atlanta in an effort to prevent the strike. Various matters in dispute

mum hourly rate on a daily basis in the event his earnings fall below the guaranteed minimum. In effect, the point plan is a variation of the conventional piece-work system. Under the piece-work system, the unit of production is usually the article, or "piece" produced; here, the unit of production is the "point".[6]

The first collective bargaining conference was held on August 31, 1945, when a draft of a proposed contract previously submitted by the Union was discussed. It provided for a minimum hourly wage rate of 65 cents, negotiation of a "properly balanced and aligned wage rate structure" based upon "the key occupational wage rates established as guide posts" in the Directive Order of the National War Labor Board of February 20, 1945,[7] and, upon the completion of negotiations and approval of the rate structure, a general increase of 10 cents per hour to all employees. The proposal included provision for a union shop and check-off of dues and initiation fees. At this conference, the respondent submitted its first written counter-proposal. On the subject of wage rates and work standards, the respondent re-asserted the principle of the point plan of incentive wage payment and the right to correct and adjust point standards and work assignments under the plan, and expressly provided that any point standard or work assignment theretofore or thereafter established by the respondent might, upon request, be studied and checked by competent engineers designated and employed by the employees through the Union as their collective bargaining representative. Fur-

[6] It should be noted that the foregoing explanation is based upon the facts disclosed at the hearing, and an examination of the exhibits. As will appear hereinafter, much of this information was not made available by the respondent to the Union during the bargaining conferences.

[7] Although the proposed contract refers to "Directive Order of the National Labor Relations Board in the matter of the 23 Southern Cotton Textile Companies and the Textile Workers Union of America, CIO, it is obvious that reference was intended to the National War Labor Board directive.

ther provision was made for the posting on the bulletin board in each department of schedules of hourly and incentive rates of pay, and "details of the incentive pay plans" applicable to employees in each department, as well as records of daily earnings upon the completion of the necessary computations. The respondent's counter-proposal also provided that the application and operation of the plan would be fully explained and discussed with employees and the Union upon request, and that full information respecting average hourly earnings of any employee or group of employees would be furnished upon request. It was specifically provided, however, that pending application of the procedures, the employees should accept and abide by the point standards theretofore and thereafter established by the respondent. The proposed contract further contemplated that engineers designated by the rspondent and by the "Employees" should mutually endeavor to reach agreement with respect to any questioned point standard or work assignment and that, failing such agreement, application should be made to the Director of the Conciliation Service of the Department of Labor to assign a qualified expert to study the job and attempt to reconcile the differences between the engineers of each of the parties. In the event of inability to resolve any disagreement the parties were, in effect, left to their own devices. It was expressly provided that arbitration provisions relating to other subjects under the contact should in no event be applicable to disputes arising out of point standards or work assignments.

Subsequent collective bargaining conferences were held between September 12 and December 19, 1945. Although tentative agreement was reached between the parties at conferences between September 12 and October 17 on miscellaneous provisions, including overtime and pre-

mium pay, holidays, seniority, and grievances, the parties were in basic disagreement on the subject of wage rates and work assignments. On October 18, the respondent submitted an amendment to its counter-proposal, accompanied by a rate schedule covering both incentive and hourly rated jobs in its various departments.

This schedule, in addition to listing rates for hourly rated jobs, set out, with respect to each of the incentive rated jobs, the rate per 100 points,[8] the anticipated earnings of employees producing 75 or 80 points per hour, and the guaranteed minimum rate per hour.

During the various conferences, the Union representatives were unable to formulate specific wage demands because of the complexity of the basic wage structure under the respondent's point plan. Although the earnings of employees, in terms of points, were posted daily on the plant bulletin boards, and the rate schedule furnished the Union representatives indicated that the daily earnings of employees under the plan were dependent upon the number of points earned as reflected by individual production, this data furnished no explanation of what constituted a point. In other words, it afforded no basis for determining the amount of work required of an employee in order to earn a point, or the unit of time against which a point was measured. The difficulty in bargaining regarding a wage rate under these circumstances is apparent.

Further confusion resulted from the fact that, while the rate schedule prepared by the respondent at the Union's request purported to demonstrate that earnings in terms of points were based upon point production, the schedule did not accurately reflect the relationship be-

[8] To simplify computation of earnings the rate was given per 100 points instead of per point.

tween earnings and point production because, to the anticipated earnings at various production levels on a point basis, had been added 10 cents, as an "across-the-board" increase authorized by the War Labor Board several months earlier. Since the 10 cents was added to the earnings of employees who produced at a rate of 75 points per hour as well as those producing at a rate of 80 points per hour, it was impossible to determine, by any examination of this rate schedule, what relationship the amount paid per point bore to the amount of money then being paid to the employees.[9]

Consequently, in order to ascertain the true basis on which the employees were being paid, and whether their earnings were commensurate with their rate of production and the nature of their work assignments, the Union requested certain specific information of the respondent. It requested information regarding (1) the definition of a point, how it was determined, what elements were considered in arriving at its value, (2) the "point standards", or detailed tables prepared by the respondent's time study engineers, which set forth exactly the elements of work assigned to the various points established for the different jobs covered by the point plan; (3) the amount of work, or number of points, normally expected of an employee in an hour,[10] before his greater efficiency or speed would enable him to earn a bonus of additional points, or, what the respondent termed, "incentive pay"; and, (4) the basis upon which the daily minimum wages in the plan were established. As will appear hereafter, none of this

[9] It was not until the December 19 conference that it was clearly indicated by the respondent that this raise, which the parties referred to at the hearing as a "floating dime", had been superimposed upon the incentive rate schedule.

[10] The Union referred to this in its negotiations as "the base rate". Although it is apparent, from the contents of the application submitted by the respondent to the War Labor Board, that the respondent made reference to "the job base rate" for 60 points of work per hour, the point plan did not contemplate a base rate in the strict sense.

information was furnished to the Union throughout the negotiations.

Apart from the information sought in connection with the operation of the point plan, an inherently complicated system, the Union, in an attempt to appraise the existing earnings of the employees with relation to their work, also requested (1) the average earnings for all the employees under the plan, (2) their production records in terms of points, and (3) job specifications for all incentive rated jobs.

The respondent does not contend that the wage rates, established under the point plan, and the corresponding work assignments are not appropriate or essential subjects for collective bargaining; it recognizes the right of the Union to bargain respecting these wage rates as it does in connection with hourly rates. Nor does the Union contest the right of the respondent to establish a wage rate structure based upon an incentive plan. It argues, however, that, having adopted a complex wage rate system, the respondent was under a duty to disclose to the Union all pertinent and essential information in its possession necessary to afford a basis for intelligent bargaining with respect to the wage rate.

In accordance with the Union's request, the respondent supplied a schedule listing the three highest and the three lowest average earnings on incentive rated jobs. When the Union representatives, upon the basis of reports from employees, contended that these figures did not indicate true averages, the respondent asserted that the production of average employees was equivalent to approximately 80 points per hour. The Union stated that this was contrary to information received from the respondent's employees. Although this issue could have

been resolved by an examination of the respondent's payroll records, and it is clear that the Union sought information which would enable it to verify the respondent's claim, the respondent did not produce these records. The respondent's counsel, admitted that the Union's request for production records was refused, because as he testified, it would "stir up a mess". He further admitted that the respondent also refused to produce its job specifications,[11] because "it would mess up our bargaining, simply muddle the issues, and that was a matter to be left to the work of the engineers after the contract was completed".

With respect to the Union's request for information concerning the operation of the point plan, the respondent admitted that at no time during the negotiations did it inform the Union what constituted a point, or that, in effect, a point represented the amount of work normally produced by an employee in 1 minute. Similarly, it was admitted that the Union was not told the amount of work, or number of points, normally expected of an employee in 1 hour.[12] The third item of information requested by the Union, related to the point standards, a table of work assignments established for each incentive rated job. As to this, the respondent admitted, for reasons discussed hereinafter, that it refused to disclose the

[11] The respondent's counsel, who acted as its spokesman during all the negotiations, used the terms "job descriptions" and "job specifications" interchangeably and without distinction. Although Plant Manager Robert A. Pickford, who also participated in the negotiations, indicated that he made no distinction between the terms, it is clear from the record that the Union's request related to information regarding the elements involved in the jobs themselves, rather than descriptive classifications, and that the respondent so construed it.

[12] Contradicting Union Representative Kanun, Williams testified that these first two points of information were not given to the respondent because they were never requested. In view of the respondent's position, set forth in detail hereinafter, that this information was not needed by the Union and that in any event it was of too technical a nature for the representatives to use intelligently, the undersigned credits Kanun in this respect.

results of its time studies to the Union. Finally, as Kanun credibly testified, with respect to the request for information as to the basis for minimum wages established on incentive rated jobs, the Union was informed by counsel for the respondent that it was determined by "historical usage". Although counsel denied having made such a statement, Plant Manager Pickford, who was also present at all conferences, corroborated Kanun's testimony in this respect.

That the information sought by the Union from the respondent during the collective bargaining negotiations was of practical rather than academic importance, is illusted by Kanun's testimony:

> —take for example a single job like a weaver's job, . . . within that job are certain elements occurring in the job. For insatnce the weaver patrols the front of his loom and he patrols the back of the loom, and he starts and he stops it, or if it has a broken thread, he fixes it. And each one of those job elements are studied and evaluated according to the amount of time it takes to do each element, and then a proportionate number of points allowed for each one of those elements, depending on how many go into the job and how long each take.

Again,

> . . . a point is a means of measuring a unit of work, and that in order to relate or to compute a worker's earnings, after the unit of work has been measured and a specific amount of work set up, then some money value is set for that unit of work.
>
> What we were trying to approach in the wage negotiations was some understanding of the relationship of the unit of work to the amount of money that was currently being attributed to that amount of work, so that in our negotiations we could request and propose to the Company a wage scale which we considered fair.

We were aware that something was wrong because our members insisted that they were not being adequately paid for the amount of work they did compared to the wages they had been earning before.

We did not go into the Company and state that there was something wrong with the point system. We specifically stated that we were requesting this information so that we could evaluate what actually was happening in the mill, then articulate our position.

Although the respondent recognized the validity of the Union's claim that it was entitled to bargain for the rate of pay which, under the respondent's plan, constituted a rate of pay per unit or point of production, it contended that what constituted a unit of production for the purpose of the plan was an industrial engineering problem. Hence, it offered the Union the privilege of having the Union's industrial engineers undertake their own time and motion studies to determine the fairness of the point standards established by the respondent's engineers. In the event of disagreement between the engineers of the respective parties, under the respondent's original counter-proposal, the services of an impartial expert were to be enlisted through the Conciliation Service, in an effort to resolve any differences. Later, under an amendment to the counter-proposal, formally submitted on November 7, 1945, failing settlement by the technician selected by the Department of Conciliation, the matter was to be submitted to arbitration.

The respondent contends, in effect, that the only method by which the Union could determine whether the point standards established by the respondent were accurate, or commensurate with the work involved, was by conducting its own time studies. Having furnished the Union with all the information which the respondent deemed essential and relevant, and having afforded it an

with subordinating the interests of the employees to its own. The undersigned so finds.

Upon the basis of the foregoing, and upon the entire record, the undersigned concludes and finds that, by refusing to bargain with the Union as the exclusive representative of the respondent's employees, as heretofore found, by the statement of Overseer Washington to employee Rider, disparaging the Union, by the remarks of Personnel Director Ethridge to Chairman Corley of the negotiating committee, which had the necessary effect of undermining the Union, and by the totality of its conduct, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under the Act.

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States; have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent has refused to bargain collectively with the Union by refusing, despite

the Union's request, to furnish complete and relevant information concerning the "point plan" and its relation to the respondent's wage structure, including job specifications, actual earnings of employees under the plan, the basis of guaranteed minimum wage rates, work assignments and other like and related information, and by granting employees a unilateral wage increase. In order to effectuate the policies of the Act, it will be recommended that the respondent, upon request, bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, respecting rates of pay, wages, hours, and other terms and conditions of employment, and specifically, but without limitation, upon all appropriate subjects of collective bargaining, the matters specifically mentioned herein. Nothing herein shall, however, be construed to require the respondent to withdraw or withhold from its employees any increase in wages heretofore granted.

Despite the absence of any evidence of widespread anti-union animus or hostility, the record sufficiently indicates, as has been shown, a reluctance or refusal on the part of the respondent to accord the Union complete and unqualified recognition as the exclusive bargaining representative, and an intention of disparaging and discrediting the Union and its representatives, as indicated by the statements of Overseer Washington in connection with the election, and by Personnel Director Ethridge respecting the motives of Union Director Douty. Although the undersigned is not convinced upon the evidence that danger of the commission of other unfair labor practices is to be anticipated from the respondent's conduct in the past sufficient to justify a recommendation that the respondent be required to cease and desist from the commission of any other unfair labor practices, it will be recommended that the respondent cease and desist from the unfair labor practices found, from interfer-

were discussed. An attempt was made to effect agreement upon the question of check-off, and several counter-proposals were made none of which were acceptable to the parties. The parties met again the following day at Griffin, but without further success. No further conference was held until December 19, when a meeting was held at the request of the Union.

The issues upon which the parties were still in disagreement at this time involved wages, work assignments, insurance provisions, severance pay, vacations, union security, arbitration, union activity upon company time, and the preamble of the contract, in which the respondent sought to define the parties to the agreement as the respondent and the "employees" in the appropriate unit, as opposed to the Union's position that the Union be denominated as party to the contract. On the issue of union security, although the Union had offered to compromise for maintenance of membership, the respondent refused to grant any form of security. As to wages, although it had originally rejected the Union's proposals for any wage increase, it proposed what amounted to an increase of about one or one and one-half cents per hour at this time.

On January 1, 1946, the members of the union negotiation committee, employed at the plant, were summoned to the office of Plant Manager Pickford and informed that the respondent was granting a general wage increase to all employees,[18] amounting to about 2 to 6 cents per hour. Pickford read to the committee the following letter under that date, addressed to Union Director Douty:

In the course of our extended contract negotiations we have repeatedly told you that our mill would be among

[18] As will be seen, certain employees were not included in the wage increase.

the first to make wage adjustments in this locality. We have learned that certain of the mills in this locality are about to adjust their wages and we are, therefore, making comparable adjustments in our wage rates effective Monday, December 31st, 1945. A copy of the notice which has been posted in the mill today outlining the various rate adjustments is attached hereto.

Attached to the letter were notices directed to the respective departments listing the various wage increases. The letter was received by Douty the next day. While the negotiating committee was in Pickford's office, copies of the notices announcing the wage increases were being posted on the bulletin boards in the respective departments.

It will be seen from the foregoing that neither the Union nor the negotiating committee was consulted from December 19, the date of the last conference, to January 1, 1946, the date of the granting of the wage increase. Nor was the committee consulted on the latter date. The respondent merely presented it with a *fait accompli*, without affording the Union an opportunity to negotiate with respect to the amount of the increase, the employees to whom the increase would be applicable,[19] the effective date of the increase or any of the factors normally envisaged by the collective bargaining process.

It cannot be disputed, nor does the respondent deny, that the granting of the wage increase at that time, constituted unilateral action. The respondent contends, however, that it was justified in adopting this unilateral action on several grounds. In the first place, it contends that it was obliged to grant the increase for what may

[19] The increase did not affect janitors, sweepers, scrubbers, outside help, and various other categories of employees included in the unit represented by the Union.

be considered competitive reasons. The respondent had stated throughout its negotiations that it had always maintained a policy of paying at least as high, or a higher wage than similar mills in the area; that if and when wages could be increased it would be among the first to do so. Consequently, when it was rumored that certain mills in the area intended to increase wages it determined to maintain its competitive position in the labor market. This, of course, cannot afford justification for a refusal to bargain or the commission of any other unfair labor practice.

Secondly, the respondent contends that, not only had the parties reached an impasse at its last conference on December 19, but also that the Union had deliberately broken off negotiations. In this connection, the respondent maintains that the Union, having insisted on some type of union security throughout its negotiations, had assumed that the respondent would eventually make some concession on this subject. When, however, it became apparent at the conference of October 17 that the respondent would not yield, even to the extent of granting the Union maintenance of membership, the Union, according to the respondent, thereafter, and especially on December 19, categorically and emphatically stated that it would not enter into contractual relations with the respondent unless it was prepared to grant some form of union security. The respondent concluded from this that further negotiations would be futile.

While it is evident that the Union was insistent in its demand for some form of union security during its negotiations with the respondent, the preponderance of the credible evidence does not support the respondent's position that the Union had, in effect, presented an ultimatum that no contract would be consummated which did

not afford union security. As has already been indicated, union security was only one of several matters, aside from the wage question, upon which agreement had not yet been reached. If, as the respondent contends, it had left no doubt as to its position on the issue of union security in the conferences of October 17 and 18, and it was convinced that the Union was adamant on this issue, it seems unlikely that the parties would have conferred on November 7 and 8, and again on December 19, when the Union submitted a written wage proposal.

It is clear, therefore, and the undersigned finds, that, although the parties had reached a temporary impasse on December 19 on some issues, principally wages, union security, and check-off, there is no substantial basis for concluding that the Union had abandoned negotiations at this time. Moreover, even if the parties had reached an impasse in their negotiations, this obviously could not affect the Union's status as majority representative. The principle that "a bargaining relationship once rightly established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed", is well-established.[20] Equally clear is the proposition that the granting of a unilateral wage increase or other concession by an employer to his employees while the designated union is attempting to bargain concerning the same subject matter, constitutes a violation of the employer's duty to bargain with the union.[21] It is not a question, contrary to the respondent's argument, of giving the Union credit for a wage increase

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[20] See, *Franks Bros. Co. v. N. L. R. B.*, 321 U. S. 702, 705.

[21] See, *Aluminum Ore Company v. N. L. R. B.*, 131 F. (2d) 485, 487, (C. C. A. 7), enf'g 39 N. L. R. B. 1286, 1295-1299; *May Department Stores v. N. L. R. B.*, 66 S. Ct. 203, 17 L. R. R. 512. See also, *Majority Rule in Collective Bargaining*, by Ruth Weyand, Columbia Law Review, Vol. XLV, 572-583, and footnotes at 581, for an excellent discussion and citation of authority on, *The Power of a Statutory Representative to Bar Unilateral Changes by Employer*.

which it did not obtain, but rather of the conduct of the respondent in granting the increase in derogation of the Union's status as statutory representative, by depriving the Union of its right to bargain with respect to such increase.

The respondent further contends that, since the Union had terminated the bargaining negotiations,[22] and had elected to enforce its demands by a strike vote, the respondent was absolved of any obligation to bargain further. This is patently unsound, for the obligation of an employer to bargain with the designated representative of the employees is not suspended by the occurrence of a strike,[23] much less by the taking of a strike vote.

Finally, the respondent contends, as asserted in its answer, that the Union, by failing and refusing "to properly and in good faith exercise the rights, and perform the functions of the sole and exclusive collective bargaining agent and representative of the employees in the bargaining unit" but, on the contrary, endeavoring to "use said rights, powers and authorities for its own selfish interests and advantages and against the interests of its principals, . . . had . . . forfeited the right to be, and is not now entitled to be recognized as, the sole and exclusive representative of all the employees in said bargaining unit for the purposes of collective bargaining . . . ." This defense relates to the respondent's contention that by its insistence upon union security, the Union was acting in derogation of the rights of minority employees who, since they had voted against representation by the Union in the Board election, were presumably opposed to union security. The respondent argues that

[22] *N. L. R. B. v. Whittier Mills*, 123 F. (2d) 725, cited by the respondent on this point, is distinguishable on the facts.

[23] See *N. L. R. B. v. Columbian Enameling and Stamping Co.*, 306 U. S. 292; see also, *N. L. R. B. v. Reed & Prince Mfg. Co.*, 118 F. (2d) 874 (C. C. A. 1), enf'g 12 N. L. R. B. 944, cert. den. 313 U. S. 595.

while there may be no legal authority for this proposition, it is a reasonable extension of the principle enunciated by the Supreme Court in the *Steele* and *Tunstall*, and *Wallace* cases.[24] The attempted extension of this principle to the facts in the instant case is untenable. The Court said in the *Steele* case, dealing with the Railway Labor Act,

> We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legisative body both to create and *restrict the rights of those whom it represents* . . . (emphasis added).

The basic principle of the majority rule in collective bargaining has been stated as follows:

> In industrial government, just as in political government, there has to be majority rule, when it comes to actual government . . . The right of petition, the right to lay grievances before Congress, is a right that any individual and every group must have. Similarly, in industrial government, the right of petition, the right to lay grievances before the employer seems to me a right that every group should be accorded, and every individual. . . . but if it comes to determining conditions of employment by making some kind of rules governing wages and hours, there obviously has to be a determi-

[24] *Steele v. Louisville & Nashville R. R.*, 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210; *Wallace Corporation v. N. L. R. B.*, 323 U. S. 248.

nation on the basis of majority rule, or you have pure anarchy, just as you would have in government.[25]

And this must be true of all aspects of appropriate subjects of collective bargaining, including union security. This contention of the respondent is patently without merit.

Upon the basis of the foregoing, and upon the entire record, the undersigned finds that on August 13, 1945, and at all times material thereafter, the Union was and has been the duly designated representative of a majority of the employees in the appropriate unit hereinabove described, and that by virtue of Section 9 (a) of the Act was, on August 13, 1945, and has since been, the exclusive representative of all the employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

Upon the basis of the foregoing, and upon the entire record, the undersigned concludes and further finds that, by failing and refusing to furnish the Union with essential and pertinent information relating to the respondent's wage structure under its "point plan", job specifications, work assignments, and information appertaining thereto, and by granting its employees a unilateral wage increase on January 1, 1946, the respondent has from August 31, 1945 to December 19, 1945, and thereafter to date, including January 1, 1946, failed and refused to bargain with the Union as the exclusive collective bargaining representative of the employees in the appropriate unit above described, and has thereby inter-

[25] Professor Edwin E. Witte, in *Hearings before Committee on Education and Labor on S. 2926*, 73rd Cong., 2d Sess. (1934) Pt. 1, p. 243, quoted in *Majority Rule in Collective Bargaining*, cited *supra*, at 563. See also, the discussion therein at 556-565.

fered with, restrained, and coerced its employees in the exercise of the rights guaranteed under the Act.

B. Interference, restraint and coercion.

Early in the evening of August 2, 1946, the day after the election which resulted in the selection of the Union as collective bargaining representative, Overseer Fred Washington sent for Mrs. Archie Rider, one of his subordinate employees at the plant, and asked her about an altercation that had occurred in the spinning room that morning between her and Section Man Hoke Cox. Rider related that while she and another employee were having lunch at the plant, she engaged in a conversation with Cox, during which he made reference to her having voted in a "damn nigger election" and remarked in profane language that he disapproved. During the ensuing altercation, she ordered Cox out of her "alley". When she had concluded her recital, Overseer Washington remarked, "Well, you did vote in a damn nigger election, didn't you?"[26]

The testimony respecting this episode was not contradicted, since Washington did not testify. The question to be determined, therefore, is whether the statement constitutes interference, restraint and coercion within the meaning of the Act. The implication of aspersion and villifaction of any labor organization which attempts to bargain collectively for all employees, without racial discrimination, as well as disparagement of members of such an organization, is apparent. The effect of such a statement made by an overseer, whose relationship to his

[26] The Board in its Decision and Direction of Election found, contrary to the Union's contention in the representation proceeding, that section men were supervisory employees. In view, however, of the Union's desire to maintain a consistent position respecting the status of these employees, counsel for the Board stated at the hearing that he was not relying upon the statements of Section Man Cox, but was relying upon the statement made by Overseer Washington, an admittedly supervisory employee, as constituting interference, restraint and coercion.

subordinate employees connotes employer attitude, is inescapable. It is one method of discrediting unionism and its underlying purpose.

On October 19, 1945, employee Hozy D. Corley, chairman of the negotiating committee, met Personnel Manager Frank Ethridge in the office of General Manager Pickford in connection with a Community Chest drive. While awaiting Pickford, Ethridge referred to the negotiating conference which had terminated the day before, and asked Corley what he thought about it. Corley replied that "it looked bad". Ethridge thereupon stated that the respondent's representatives had "come to the conclusion that [Union Director] Douty had quit arguing for the help and gone to arguing for the Union itself". Corley took issue with this statement, and Ethridge remarked, according to Corley, "Well, the Union hired him hard and he had to do so much business to get so much money, or had to get some kind of a raise through the mill to get it". Corley observed that Douty's compensation would be unaffected even if he were to succeed in organizing "every mill in Griffin". During the discussion Ethridge further stated that he did not think that the respondent would make any concession on the question of union security or wage increases.

Ethridge admitted that he had engaged in the discussion with Corley under the circumstances related. He conceded that he had stated that "it seemed to me the Union had quit negotiating for the people and had gone to negotiating for their own good", but that he had added that he "didn't blame Mr. Douty for trying to secure himself, or secure the dues, that . . . the people at Highland Mill . . . had asked them to come down there, and they were certainly due to pay them".[27]

[27] Other testimony by Ethridge indicated that he had discussed with Corley the probable effect upon Douty's compensation of his securing union contracts which did not provide for union security in the respondent's and other mills in the area; Ethridge remarking that Douty's lack of success in this respect might result in a decrease in salary or loss of his position.

It is apparent that the discussion arising out of the issue of union security occurred at a time when negotiations were apparently at an impasse, and the statement attributed to Ethridge must be considered in this setting. Two further circumstances should be mentioned. It will be recalled that one of the matters upon which the parties were in disagreement at this stage was the preamble of the contract, under which the respondent insisted that the employees should be named as party, in contradistinction to the Union. Although the recognition clause in the respondent's proposed contract recognized the Union as representative of the employees in the unit, the respondent's insistence upon designating the parties to the contract as "Employer and Employees in the hereinafter described Bargaining Unit as, and hereinafter called, Employees", indicates an intent upon the part of the respondent to accord the Union only qualified recognition. This position may have resulted from the respondent's erroneous conception of the status of the majority representative, already discussed. However, the respondent's subsequent conduct in unilaterally granting the wage increase affords evidence of an intention upon the part of the respondent to discredit the Union in the eyes of the employees.

The incidents related above, although treated separately herein for convenience in arrangement, cannot be isolated from the context of the respondent's unlawful conduct, but must be considered as part of the totality of a course of conduct calculated to defeat the employees' right of self-organization. Viewed in this light, Ethridge's statement to the chairman of the negotiating committee assumes added significance, and supports the conclusion that the statement was intended to further disparage and discredit the Union and its representatives, and to undermine it with the employees by charging the Union

Registered Article No.: 69309.

Insured Parcel No.:

Form 3811 Rev. 1-4-40.

81 ORDER AMENDING DECISION AND ORDER

806-D

United States of America

Before The National Labor Relations Board

In the Matter of:

Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

On August 21, 1946, the National Labor Relations Board issued a Decision and Order in the above-entitled proceedings. The Order inadvertently omitted a provision dismissing the complaint in the respects mentioned in Paragraph 2 of the Decision.

It Is Hereby Ordered that the section entitled "Order" be amended by adding, after Paragraph 2 of the Order, the following provision:

It Is Further Ordered that the complaint, insofar as it alleges that the respondent, by vilifying, disparaging, and expressing disapproval of the Union, has interfered with, restrained, and coerced its employees, within the meaning of Section 8 (1) of the Act, be, and it hereby is, dismissed.

And It Is Further Ordered that the printed Decision and Order shall appear as herein amended.

Signed at Washington, D. C., this 26 day of August, 1946.

PAUL M. HERZOG,
Chairman.
GERARD D. REILLY,
Member.
(Seal) NATIONAL LABOR RELATIONS BOARD.

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82 AFFIDAVIT AS TO SERVICE.

File in Informal File.

Y-202 (6-1-45)

In the Matter of:
Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

District of Columbia, ss

I, Thomas Harrel, Jr., being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 27th day of August, 1946, I mailed postpaid, bearing Government frank, by registered mail, [Dated August 26, 1946] a copy of the Order

ing with the efforts of the Union to bargain collectively, and from disparaging or discrediting the Union or its representatives.[28]

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law.

1. Textile Workers Union of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees, including watchmen, of the respondent, employed at its Griffin plant, but excluding office, clerical, technical, and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, was, on August 13, 1945, and at all times thereafter has been and is now, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

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[28] *See N. L. R. B. v. Express Publishing Company*, 312 U. S. 426; *May Department Stores v. N. L. R. B.*, 66 S. Ct. 203, 17 L. R. R. 512.

4. By refusing from August 31, 1945 to December 19, 1945, and at all times thereafter including January 1, 1946, to bargain collectively with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meanir of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

76 RECOMMENDATIONS.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, the undersigned recommends that the respondent, Crompton-Higland Mills, Inc., Griffin, Georgia, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all production and maintenance employees, including watchmen, of the respondent employed at its Griffin plant, but excluding office, clerical, technical and

laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees respecting rates of pay, wages, hours of work, and other conditions of employment, and particularly with respect to those matters defined in the section entitled "The remedy" herein, concerning which it has been found the respondent has failed or refused to bargain;

(b) Unilaterally granting wage increases or making any other changes in wage rates of the employees in the aforesaid unit without consulting with said Union;

(c) In any manner interfering with the efforts of Textile Workers Union of America, affiliated with Congress of Industrial Organizations, to bargain collectively with the said Union in behalf of the employees in the aforesaid appropriate unit;

(d) Interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed under the Act, by disparaging and discrediting the said Union and its representatives.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the employees in the aforesaid unit, respecting rates of pay, wages, hours of work and other conditions of employment, specifically with respect to those matters defined in the section entitled "The remedy" herein, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Upon request, furnish Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, with complete and relevant information concerning the "point plan", and its relation to the respondent's wage structure, job specifications, actual earnings of employees under the plan, the basis of guaranteed minimum wage rates, work assignments and other like and related information;

(c) Consult with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, prior to granting wage increases or making any other changes in wage rates of the employees in the aforesaid unit;

(d) Post at its plant at Griffin, Georgia, copies of the notice attached hereto and marked "Appendix A". Copies of said notice to be furnished by the Regional Director for the Tenth Region shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) File with the Regional Director for the Tenth Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report

the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

IRVING ROGOSIN,
(Irving Rogosin)
Trial Examiner.

Dated: March 25, 1946.

79 APPENDIX A.

Notice to All Employees.

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not refuse to bargain collectively with Textile Workers Union of America, affiliated with the Congress of Industrial Organization, as the exclusive representative of the employees in the unit described below.

We Will Not unilaterally make any changes with respect to rates of pay or wages, of the employees in the bargaining unit described below without prior consultation with the said Union.

We Will Not in any manner interfere with the efforts of Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, to bargain collectively with the said Union in behalf of the employees in the bargaining unit described below.

We Will Not interfere with, restrain, or coerce our employees by disparaging or discrediting the said Union or its representatives.

We Will Bargain collectively with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of our employees in the bargaining unit described below.

We Will furnish Textile Workers Union of America, affiliated with the Congress of Industrial Organizations,

upon request, with complete and relevant information concerning the "point plan" and its relation to the respondent's wage structure, the operation of the said plan, job specifications, actual earnings of employees, the basis of guaranteed minimum wage rates, work assignments, and other like or related information.

We Will consult with Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, prior to granting wage increases, or making any other changes in wage rates of the employees in the bargaining unit described below.

The Bargaining Unit Is:

All production and maintenance employees, including watchmen, of the respondent employed at its Griffin plant, but excluding office, clerical, technical and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

CROMPTON-HIGHLAND
MILLS, INC.
(Employer.)

By .....
(Representative.) (Title.)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

80 AFFIDAVIT AS TO SERVICE.

File in Formal File.

Y-202 (6-1-45)

In the Matter of
Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO.
Case No. 10-C-1812.

District of Columbia, ss.

I, Thomas Harrell, Jr., being first duly sworn, on oath saith that I am one of the employees in the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 21st day of August, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision & Order [and Intermediate Report] to the following-named persons, addressed to them at the following addresses:

Mr. Ralph Williams,
1425 C. & S. Bank Building,
Atlanta, Georgia.

69308

Textile Workers Union of America,
Att.: Mr. Kenneth Douty and Mrs. Clara Kanun,
75 Ivy Street, N. E.,
Atlanta, Georgia.

69309

(Sgd.) THOMAS HARRELL, JR.
(Thomas Harrell, Jr.)

Subscribed and sworn to before me this 21st day of August, 1946.

MERLE J. SMITH,
Designated Agent for the National Labor Relations Board.

10-C-1812.

Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this card.

1. (Signature or name of addressee) Ralph Williams.

2. (Signature of addressee's agent—Agent should enter addressee's name on Line One above) L. Smith.

Date of delivery: 8-23, 1946.

Post Office Department, Official Business.

Penalty for Private Use to Avoid Payment of Postage, $300.

Postmark of Delivering Office: Atlanta, Aug. 23, 4:30 PM, 1946, Ga., 3.

Return to (Name of Sender): National Labor Relations Board.

Street and Number, or Post office Box: Washington, D. C.

Registered Article No.: 69308.

Insured Parcel No.:

Form 3811 Rev. 1-4-40.

10-C-1812.

Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee) Ken Douty, T. W. U. A.

2. (Signature of addressee's agent—Agent should enter addressee's name on line One above)

Date of delivery: 8-23, 1946.

Post Office Department, Official Business.

Penalty for Private Use to Avoid Payment of Postage, $300.

Postmark of Delivering Office: Atlanta, Aug. 23, 4:30 PM, 1946, Ga., 3.

Return to (Name of Sender): National Labor Relations Board.

Street and Number, or Post Office Box: Washington, D. C.

Amending Decision And Order to the following-named persons, addressed to them at the following addresses:

Mr. Ralph William
1425 C. & S. Bank Building,
Atlanta, Georgia.

Textile Workers Union of America,
Att.: Mr. Kenneth Douty and Mrs. Clara Kanun,
75 Ivy Street, N. E.,
Atlanta, Georgia.

(Sgd.) THOMAS HARRELL, JR.

Subscribed and sworn to before me this 27th day of August, 1946.

(Sgd.) MERLE J. SMITH,
Designated Agent for the
National Labor Relations
Board.

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83 ORDER CORRECTING DECISION AND ORDER.

File in Informal File.

873-D

United States of America.

Before The National Labor Relations Board.

In the Matter of:

Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

On August 21, 1946, the Board issued a Decision and Order in the above-entitled proceeding (70 N. L. R. B., No. 21), and on August 26, 1946 an amendment thereto

It Is Hereby Ordered that the aforesaid Decision and Order be, and it hereby is, corrected by deleting the sentence, "Nor are we impressed with the respondent's attempted justification for its action on the ground that the Union broke off negotiations on December 19 and, therefore, that the respondent never proposed to the Union as a possible basis of agreement a wage increase comparable to that granted on January 1, 1946," in paragraph 1 on page 2 of the Decision, and substituting therefor the following: "Nor are we impressed with the respondent's attempted justification for its action on the ground that the Union broke off negotiations on December 19 and that the respondent was therefore relieved of the obligation to deal with it. Concededly, the respondent never proposed to the Union as a possible basis of agreement a wage increase comparable to that granted on January 1, 1946."

And It Is Further Ordered that the printed Decision and Order shall appear as herein corrected.

Dated, Washington, D. C., this 5th day of September, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

(Seal)
G

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84 AFFIDAVIT AS TO SERVICE.

Y-202 (6-1-45)

In the Matter of:

Crompton-Highland Mills, Inc. and Textile Workers Union of America, CIO.

Case No. 10-C-1812.

District of Columbia, ss.

I, Thomas Harrell, Jr., being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 5th day of September, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Order Correcting Decision And Order to the following-named persons, addressed to them at the following addresses:

Mr. Ralph Williams,
1425 C. & S. Building,
Atlanta, Georgia.

Textile Workers Union of America,
Att.: Mr. Kenneth Douty and Mrs. Clara Kanun,
75 Ivy Street, N. E.,
Atlanta, Georgia.

(Sgd.) THOMAS HARRELL, JR.

Subscribed and sworn to before me this 5th day of September, 1946.

(Sgd.) MERLE J. SMITH,
Designated Agent for the National Labor Relations Board

85 CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

In the United States Circuit Court of Appeals for the Fifth Circuit.

National Labor Relations Board, Petitioner,

v.

Crompton-Highland Mills, Inc., Respondent.

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board, entitled, "In the Matter of Crompton-Highland Mills, Inc. and Textile Workers Union of America, C. I. O.," the same being known as Case No. 10-C-1812 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Irving Rogosin Trial Examiner for the National Labor Relations Board, dated February 20, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Rogosin on February 20 and 21, 1946, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Rogosin's Intermediate Report, dated March 25, 1946 (annexed to Item 12 hereof); copy of order transferring case to the Board, dated March 28, 1946, together with copy of affidavit of service thereof.

(4) Copy of respondent's request for oral argument before the Board, dated April 4, 1946.

(5) Copy of respondent's telegram, dated April 8, 1946, requesting extension of time to file exceptions and brief.

(6) Copy of Board's telegram, dated April 9, 1946, granting all parties extension of time to file exceptions and briefs.

(7) Copy of respondent's exceptions to the Intermediate Report, dated April 20, 1946.

(8) Copy of Union's telegram, dated April 23, 1946, requesting extension of time to file reply to respondent's brief.

(9) Copy of Board's telegram, dated April 24, 1946, denying Union's request for extension of time to file reply to respondent's brief.

(10) Copy of notice of hearing for the purpose of oral argument before the Board, dated May 23, 1946, together with copy of affidavit of service thereof.

(11) Copy of list of appearances at oral argument held before the Board on June 25, 1946.

(12) Copy of Decision and Order issued by the National Labor Relations Board on August 21, 1946, together with affidavit of service and United States Post Office return receipts thereof.

(13) Copy of order amending Decision and Order, dated August 26, 1946, together with copy of affidavit of service thereof.

(14) Copy of order correcting Decision and Order, dated September 5, 1946, together with copy of affidavit of service thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 4th day of December, 1947.

(Seal)

FRANK M. KLEILER,
(Frank M. Kleiler)
Executive Secretary.
NATIONAL LABOR RELATIONS BOARD.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:—

Answer of Respondent, Filed—January 12, 1948.

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

CROMPTON-HIGHLAND MILLS, INC.,
Respondent.

No. 12,191.

RESPONSE OF CROMPTON-HIGHLAND MILLS, INC.

Comes now Crompton-Highland Mills, Inc., the Respondent in the above stated petition for enforcement of an order of the National Labor Relations Board, and, in opposition and response to said petition, respectfully shows:

(1) Respondent admits that it is a Georgia corporation, engaged in business in the State of Georgia, within this judicial circuit. Respondent denies having committed any unfair labor practice, but admits that this Court has jurisdiction of said petition under Section 10 (*e*) of said Act.

(2) Respondent admits that the order quoted in paragraph 2 of said petition was issued by said Board on August 21, 1946, and admits that the decision and order of said Board were amended by said Board on August 26, 1946. Respondent shows that said decision and order were further amended by said Board on September 5, 1946. Respondent denies that said Board duly stated its findings of fact and conclusions of law, and denies that said order was duly issued. Respondent avers, on the contrary, that said order was improvidently, improperly and erroneously issued, and that said order should not be enforced, for that:

(a) The findings and conclusions of the Board do not support the order sought to be enforced.

(b) The findings and conclusions of the Board are not supported by and are contrary to the evidence which was adduced before the Trial Examiner, and are contrary to the law and facts of the case.

(c) The Board erred by failing and refusing to sustain Part Two (Transcript of Record, Volume 1, pages 44-46), Part Three (Transcript of Record, Volume 1, pages 47-48), and paragraphs 3, 4 and 5 of Part Five (Transcript of Record, Volume 1, pages 53-54) of Respondent's Exceptions to the Intermediate Report of the Trial Examiner.

(d) Respondent did not refuse to bargain with the Union, or commit any unfair labor practice, by increasing the wage rates of its employees on January 1, 1946. No collective bargaining negotiations were then pending or requested. Collective bargaining negotiations had been finally terminated by the Union on December 19, 1945. Respondent was not under any duty to, and the Union did not, request a resumption of said negotiations.

(e) The conclusion of the Board that Respondent did not "consult the Union" regarding said wage increase is not supported by and is contrary to the uncontradicted evidence.

(f) The decision and order of the Board were predicated "solely" on the ground that Respondent committed an unfair labor practice "by granting a wage increase to its employees without consulting the Union"; and the order sought to be enforced is therefore broader than the only finding and conclusion on which it is based, and should therefore, if enforced, be modified so as to restrict it to the only unfair labor practice found to have been committed.

(g) The Board erred by failing and refusing to consider, or to make any findings or conclusions with respect to, and by failing and refusing to sustain, the contention of Respondent (Paragraph 11, Transcript of Record, Volume 1, page 24, of Respondent's answer to the complaint of the Board Part Three, Transcript of Record, Volume 1, pages 47-48, of Respondent's Exceptions to the Intermediate Report of the Trial Examiner) that the Union forfeited the right to be, and the right to be recognized as the sole and exclusive collective bargaining agent of the employees, by attempting to use said agency authority for its own selfish interests and advantages and to the prejudice and against the interests of the employees whom it had sought and obtained the authority to represent.

(3) The allegations of paragraph 3 of said petition are admitted, and Respondent shows that it was likewise served with the amendment of said decision and order dated September 5, 1946 (Transcript of Record, Volume 3, page 112).

(4) The allegations of paragraph 4 of said petition are admitted.

(5) Respondent further shows that since the hearing before the Trial Examiner and the issuance of the order sought to be enforced, Respondent has bargained with the Union with respect to two general increases in wages and has reached tentative agreements with the Union with respect to all proposed provisions of a collective bargaining contract except the provisions demanded by the Union with respect to the security of the Union and the deduction of the Union's dues from the wages of the employees, and that on September 19, 1946, Respondent offered to sign the contract which had been tentatively agreed upon in collective bargaining, and that the Union refused to sign said contract solely because Respondent would not contract to protect the Union against the anticipated unwillingness of the employees to maintain membership in and pay dues to the Union. Respondent shows that its efforts to bargain with the Union having been frustrated and defeated by the failure and refusal of the Union to bargain with Respondent in good faith, Respondent has been relieved of any duty to further bargain with the Union, and that the order sought to be enforced should not, for that reason, be enforced. Respondent now offers to fully prove the facts set forth and stated in this paragraph 5, and respectfully submits that opportunity so to do should be provided by the Court.

Wherefore, Respondent prays:

(a) That the prayers of said petition be denied and that the order sought to be enforced not be enforced;

(b) That said order, if enforced, be modified so as to restrict it to the only unfair labor practice found to have been committed, namely, making a general increase in wages without consulting the Union; and

(c) That the Court hear, or provide for the taking of evidence regarding the facts and matters alleged in paragraph 5 above.

Respectfully submitted,

RALPH WILLIAMS,
Attorney at Law for Crompton Highland Mills, Inc., Respondent

JONES, WILLIAMS, DORSEY & HILL,
1425 Citizens & Southern Nat. Bank Bldg.,
Atlanta, Georgia.

Georgia,
Fulton County.

Before the undersigned attesting officer personally appeared Ralph Williams, who, being duly sworn, on oath states that he is attorney at law for Crompton-Highland Mills, Inc., the Respondent in the above stated case, and that the facts stated in the above and foregoing response are true.

Ralph Williams.

Sworn to and subscribed before me, this January 10th, 1948.

Gene Eldridge
(Seal) Notary Public, Georgia State at Large.

ARGUMENT AND SUBMISSION.

Extract from the Minutes of April 6, 1948.

No. 12191

NATIONAL LABOR RELATIONS BOARD,

versus

CROMPTON-HIGHLAND MILLS, INC.

On this day this cause was called, and, after argument by Miss Fannie M. Boyls, Attorney, National Labor Relations Board, for petitioner, and Ralph Williams, Esq., for respondent, was submitted to the Court.

Opinion of the Court Filed—May 5, 1948.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12191

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

CROMPTON-HIGHLAND MILLS, INC., *Respondent*

Petition for Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(May 5, 1948)

Before HUTCHESON, HOLMES, and WALLER, Circuit Judges.

WALLER, Circuit Judge:- The Board on the 21st of August, 1946, ordered the Respondent to: (1) cease and desist from refusing to bargain collectively with the Union; (2) (a) upon request, to bargain collectively with the Union in respect to rates of pay, wages, hours, and other conditions of employment; (b) to post appropriate notices, and (c) to notify the Regional Director of the steps taken to comply.[1]

[1] The pertinent parts of the order of the Board require the Company to:

"1. Cease and desist from:

"(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of the respondent's production and maintenance employees at its Griffin plant, including watchmen, but excluding office, clerical, technical, and laboratory employees, section men in the spinning room, head loom fixers in the weave room, head fixers in the card room, all supervisory employees of the grade of second hand and above, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action; by taking action, without prior consultation with

In response to the Board's belated petition for the enforcement of its order, Respondent asserts that it has complied with the order in that it has posted notices, has on two occasions, since the making of the order, bargained satisfactorily with the Union in respect to two subsequent and general, increases in wages, and that on September 19, 1940, or after the making of the order, it had offered to sign a contract, which, in greater part, had been tentatively agreed upon with the Union in collective bargaining, if the provisions for the withholding of Union dues from wages of employees were eliminated, but that the Union refused to sign such contract without provisions for Union security therein. It offers to prove the facts set out above.

The Board's findings stated:

> "The Trial Examiner found that the respondent, in violation of Section 8 (1) and (5) of the Act, failed to bargain collectively with the Union as the statutory representative of the respondent's employees by refusing to furnish the Union with certain detailed information relating to the incentive wage plan *and by granting a wage increase to its employees without consulting the Union*. Although we agree with the Trial Examiner's conclusion, we, however, rest our determination solely on the latter ground." (Italics supplied.)

Therefore, the only unfair labor practice found by the Board was the granting of a wage increase to its employees without consulting the Union.

It appears, however, to be undisputed in the evidence of Mr. Doity, the representative of the Union in the State, that when the wage increase was granted collective bargaining had broken down, the Union had withdrawn from further bargaining in connection with the matter, and a strike vote had already been called. The evidence also seems to be without dispute that the raise in wages was made by the Company to meet competition by other mills in that section. Under these circumstances it does not appear to be an unfair labor practice to grant a general increase in wages to the employees without consulting the Union. On the strength of this

---

said organization, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

"(b) In any manner interfering with the efforts of Textile Workers Union of America, CIO, to bargain collectively with it as the representative of its employees in the appropriate unit described above.

"2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

"(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all of its employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other conditions of employment;"

view, and in the light of the earnest assertions by the Respondent that it has complied with the Board's previous order and has subsequently bargained with the Union in relation to two general increases in wages, the petition of the Board for enforcement of the order will be denied.

The petition of the Board is

DENIED.

JUDGMENT.

Extract from the Minutes of May 5, 1948.

No. 12191

NATIONAL LABOR RELATIONS BOARD,

versus

CROMPTON-HIGHLAND MILLS, INC.

This cause came on to be heard on the petition of the National Labor Relations Board for the enforcement of an order of the National Labor Relations Board made on August 21, 1946, as amended on August 26, 1946, "In the Matter of Crompton-Highland Mills, Inc. and Textile Workers Union of America, C. I. O.", Case No. 10-C-1812, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition for the enforcement of the order of the National Labor Relations Board in this cause be, and the same is hereby, denied.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 118 to 129 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 12191, wherein National Labor Relations Board is petitioner, and Crompton-Highland Mills, Inc., is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 117 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of July, A. D. 1948.

Oakley F. Dodd
Clerk of the United States Circuit Court
of Appeals, Fifth Circuit.

(Seal)

U. S. GOVERNMENT PRINTING OFFICE 1948—799049/P. C. 787

Supreme Court of the United States

Order allowing certiorari

Filed October 11, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court of the United States

Stipulation as to the record

Filed December 2, 1948

Subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the printed record herein shall consist of the following:

1. The printed Transcript of Record in the court below.

2. The printed Response of Crompton-Highland Mills, Inc., in the court below.

3. The Appendix to the Brief of the National Labor Relations Board in the court below.

4. The Appendix to the Brief of Crompton-Highland Mills, Inc., in the court below.

5. The opinion of the court below filed May 5, 1948.

6. The judgment of the court below entered May 5, 1948.

7. The Order made and entered by Judge Samuel H. Sibley, one of the Judges of the court below, on August 26, 1948, and the motion of Crompton-Highland Mills, Inc., on which said Order was made and entered.

Subject to this Court's approval it is further stipulated and agreed that instead of including printed copies of respondent's exhibits 3, 4, and 2 in the printed record, petitioner will furnish nine photographic copies of these exhibits to the Court for use by it in considering the case.

Subject to this Court's approval, it is further stipulated and agreed that there need be no reprinting of the Transcript of Record and Appendix to the Brief of the National Labor Relations Board referred to in items 1 and 3 above, but that the copies as printed in the court below may be included in the printed record before this Court.

Subject to this Court's approval, it is further stipulated and agreed that petitioner will cause the Clerk of the United States Court of Appeals for the Fifth Circuit to file with the Clerk of the Supreme Court the entire record certified and filed by said Board in said Court of Appeals and that either party may refer to any portion thereof not included in the printed record in this Court, and particularly to respondent's exhibits 3, 4, and 2.

Dated at Washington, D. C., this 30th day of November 1948.

PHILIP B. PERLMAN,
Solicitor General of the United States.

Dated at Atlanta, Georgia, this 26th day of November 1948.

RALPH WILLIAMS,
Attorney for Crompton-Highland Mills, Inc.

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Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 197

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

CROMPTON-HIGHLANDS MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 4, 1948
CERTIORARI GRANTED OCTOBER 11, 1948

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[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD

TENTH REGION

Case No. 10-C-1812

In the Matter of CROMPTON-HIGHLAND MILLS, INC., *and* TEXTILE WORKERS UNION OF AMERICA, CIO

SPALDING COUNTY COURT HOUSE,
GRIFFIN, GEORGIA,
Wednesday, February 20, 1946.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 a. m.

Before IRVING ROGOSIN, Esq., Trial Examiner.

Appearances: Thomas T. Purdom, Esq., Atlanta, Georgia, appearing on behalf of the National Labor Relations Board. Kenneth Douty, Clara Kanun, 75 Ivy Street NE., Atlanta, Georgia, appearing on behalf of Textile Workers Union of America, CIO, the Union. Ralph Williams, Esq., Attorney, 1425 C. & S. Bank Building, Atlanta, Georgia, appearing on behalf of Crompton-Highland Mills, Inc., the Respondent.

* * *

[3] PROCEEDINGS

Trial Examiner ROGOSIN. The hearing will be in order. This is a formal hearing before the National Labor Relations Board in the matter of Crompton-Highland Mills, Inc., and Textile Workers Union of America, CIO, Case No. 10-C-1812.

* * *

[8] (The documents heretofore marked "Board's Exhibits Nos. 1-A through 1-E" for identification were received in evidence.)

* * *

[18] RALPH WILLIAMS (Board witness).

* * *

DIRECT EXAMINATION

* * *

[19] By Mr. PURDOM:

Q. Mr. Williams, the Crompton-Highland Mills——

* * *

By Mr. PURDOM (continuing):

Q. Began the installation of a point plan, the engineering work of which was done by the C. L. Stevens Company of Baltimore, Maryland, in June 1942; is that right?—A. I am not quite sure of the exact date. I understand it was sometime in 1942.

Q. And the Company does have the records on the installation of this plan insofar as it has been installed in the mill, does it not?—A. We of course have the rate schedules which result from the application of the plan, yes, sir; and we have produced those in response to Items 2——

Q. And the mill does refer to this as the point plan of wage incentives, does it not?—A. Yes, sir.

Trial Examiner ROGOSIN. Point? Is that [spelling] p-o-i-n-t?

Mr. PURDOM. Yes.

The WITNESS. Yes; the mill operates largely on the basis of an incentive wage plan, which is called colloquially [20] as the point plan.

* * *

[22] Mrs. CLARA KANUN (Board witness).

* * *

DIRECT EXAMINATION

* * *

Q. What is your job?—A. I am a field representative of the Textile Workers Union of America.

Q. In this capacity have you had any dealings with the Crompton-Highland Mills, Inc., Griffin, Georgia?—A. Yes; I have participated in the contract and wage negotiations which have taken place since we won the election last August.

[23] Q. What were the first negotiations that you participated in—what date?—A. The first meeting I attended was on October 18.

Q. Were you handling any particular part of the negotiations?

Trial Examiner ROGOSIN. What date?

The WITNESS. I am sorry. 1945.

By Mr. PURDOM:

Q. Were you handling any particular part of the negotiations?—A. Yes; I was handling the wage end of the negotiations.

Q. And for whom were you handling those negotiations?—A. For the local union at the Crompton-Highland Mills.

Q. What happened at this meeting in connection with wages?—A. At the meeting of October 18, 1945, the Company presented to the Union its counterproposal on the wage question, which consisted of a listing by departments of the jobs in the mill and the proposed rates or proposed earnings on the incentive systems of the individual jobs.

Q. Now, before you go into that any further, are you familiar with the first proposals that had been submitted by the Union to the Company?—A. Yes; I am familiar with them.

Q. Did it ask for any increase in wages?—A. Our first proposal to the Company on wages asked for a 65c per hour minimum and 10 cents per hour wage increase [24] for all the workers in the mill and a third shift differential of 5 cents per hour.

Q. Did it pertain to anything on a unit?—A. We asked for—our first wage proposal was a generalized one made with the first proposal of the contract submitted to the Company in the middle of August 1945. We were not at that time familiar enough with the incentive system of the Company——

Q. I will ask you to look at this document a moment and see if in accordance with that you asked for any peg points in your first proposal.—A. According to our first contract proposal we asked, in addition to the 65-cent minimum, to first balance the wage scale according to the job relationship set-up by the War Labor Board in its Directive Order of February 20, 1945, and after that balance or alignment of the jobs in the mill was accomplished, then the 10 cents per hour across the board was to be applied.

Q. Well, now, was this Southern Textile Commission peg points set-up based on the 60-unit value?—A. No; the original order of the Board did not define how those peg points were to be applied in an incentive rate mill.

Q. Now, what was the Company's counterproposal on wages? What did it amount to? Tell us in your own words. Did it [25] amount to any increase in wages, or decrease?—A. The Company's counterproposal in wages of October 18, 1945 was difficult for us to understand, because it gave us no information on the actual earnings of the workers in the mill at that time. It gave us no information on how the figures listed on this proposal of October 18 were related to the amount of work required from the workers in the mill; and, insofar as we were able to check directly with our members, the figures had no relationship to the actual earnings of the employees in the mill.

Now, may I take as an example or explanation of what this schedule contained, the first page of the schedule, which was the card room.

The top of the page lists the incentive rated jobs. For each incentive rated job was one column entitled, "Rate Per Hundred Points."

We couldn't get a clear explanation of what that column meant or how much work one point or a hundred points represented.

The second column was entitled "Earnings at a 75 Point Hour." The third column was entitled, "Earnings at an 80 Point Hour." And the explanation we got from the Company on that column especially was that the figures listed in that column were the expected earnings of the workers as soon as the incentive system began operating properly.

* * *

[26] By Mr. PURDOM:

Q. Look at Board's Exhibit 2 and see if that is the same as what you were reading from.—A. Yes; this is the same as Board's Exhibit 2.

Q. Now, when you saw the inadequacy of what was furnished you, did you ask them for anything?—A. We asked——

Trial Examiner ROGOSIN. Incidentally, that should be Board's Exhibit 2 for identification, of course.

A. (Continuing.) We asked the Company for more detailed explanation of the actual earnings of the workers in the mill. We also asked the Company for the base rate, as we understood the incentive system did have a base or standard [27] rate on which these other expected earnings were computed.

Q. Now, when you asked for average earnings in the mill, how did you break that down as to what you wanted?—A. We asked the Company to give us the average earnings on each job, to also give us figures on the three highest average earnings on each job, and the figures on the three lowest average earnings of each job.

Q. Did you ask anything of the Company in connection with the basis upon which the guaranteed daily minimum was figured?—A. Yes.

Q. What was that?—A. We were told that the guaranteed daily minimum had no relation to the wage system as such, but that the figures had been arrived at purely on a quote "historical usage," end of quotes.

Q. Now, this Board's Exhibit 2 for identification, which was a counterproposal of the Company, did it result in any increase in wages, or not?—A. Insofar as we could tell, it did not result in any increase, since we had no way of knowing what relationship it had to the amount of work required from each worker.

Q. Now, at this conference, did you get this information that

you requested from the Company?—A. No; it was not given to us.

[28] Trial Examiner ROGOSIN: Which conference are you now speaking of, Mr. Purdom?

Mr. PURDOM. We are still on October 18.

Trial Examiner ROGOSIN. Very well.

By Mr. PURDOM:

Q. Now, were there any other issues discussed at this conference?—A. Yes; there were still several other contract issues which came up for discussion that day.

Q. On which you were not in agreement, the same as wages?—A. On which we had not yet arrived at agreement.

Q. Do you recall what those were?—A. Well, the other issues not yet settled at that time were arbitration clause on work load assignments, union security, and check-off. There may be others, but I don't remember.

Q. What happened after this conference? What was the next step?—A. Well, negotiations seemed to be deadlocked, and we then in the interim had a local union meeting during which the local union decided to petition the Secretary of Labor for a strike vote and to shut the mill down unless they were able to get a satisfactory contract.

Q. Did you take that vote? Was that vote taken?—A. That vote was taken.

Q. Do you recall the results of that vote under the Smith-Connally Act?—[29] A. Yes. The results were, I think, 369 votes for a strike and 120—130 votes against a strike. I am not sure—120 votes against the strike.

Q. After that did you have another meeting with the Company?—A. Immediately after the strike vote, the local union called a special meeting at which it went on record to advise the Company of its decision to shut the mill down unless a contract was signed, and also, of course, to advise the Company that it would be glad to meet again with it in a final effort to reach a settlement before actually taking strike action. In response to that we met with the Conciliator.

Q. When?—A. (Continuing.) Of the Conciliation Department in Atlanta on November 7, 1945.

Q. Now, at that time, was any of the information that you——A. I am sorry, Mr. Purdom. I think I should correct that. I am getting my dates confused. The meeting in the Conciliator's office was before the strike vote was taken. It was in the interim between the time our strike vote petition had been filed and the vote had been taken.

Q. At this meeting on November 7 in the Conciliator's office, did the Company furnish you with the information that

had been previously requested?—A. At the meeting on November 7 the Company did furnish [30] us with some figures of average earnings. However, these figures covered only about a third of the workers in the mill, the Company saying that only these workers were as yet on the incentive system jobs. They gave us no information on the earnings of the other workers in the mill and how they were paid or what their average earnings were.

Q. Did they give you any information on base rates that you had asked about?—A. No. The Company at that time still insisted that there was no such thing as a base rate, and even though we specifically raised the issue that from our rule there should be a base rate set on 60 units of production for every hour, the Company still insisted that there was no such system in its mill.

Q. Did you meet again on the eighth of November?—A. We met again in Griffin in the Company office on the 8th of November.

Q. Did you submit any wage proposal?—A. At that time we submitted our wage proposal dated November 8, 1945. That proposal requested a 60-cent minimum. It requested that a base rate set on 60 units of production be set up with amounts or rates listed for each job, using the job relationship and rates announced by the Southern Textile Commission. It also, in order to carry out the Company's use of an [31] 80-point hour, listed a base for an 80-point hour. It requested a guaranteed daily minimum based on the 60-point hour base rate. And I think there were some other points.

It also requested that after these job relationships had been agreed upon, that there would be a 5-cent per hour increase on top of all the rates agreed to, or all the rates requested under the 60-unit base rates, and the third shift differential.

Q. What was the Company's position on wages at that time?—A. There was no offer made on wages on November 8. The Company's position was that the proposal they had given us on October 18 was the proposal they would have to abide by.

Q. Did it give any reason for not offering any wage increase?—A. The Company's position was that at this time their workers were earning the highest rates in the territory and therefore they were in no position to give an increase at this time.

Q. Well, what did it say its policy was on giving increases?—A. The Company did say that when the other manufacturers in the territory raised wages, that it, according to its previous policy, would be among the first to do so.

Q. Now, after these two meetings, did you in any manner, by getting in touch with your research department, figure out anything on their incentive system?—[32] A. We sent to our research department copies of the Company's average hourly earnings. We also sent them a copy of the Company's proposal of October 18, 1945 and an explanation that the Company insisted it had no 60-unit base rate.

Our research department, from its familiarity with incentive systems, particularly the C. L. Stevens System, and our research director, Mr. Solomon Barkin, who has many, many times been in direct negotiations with Mr. C. L. Stevens, worked out from the meager information we were able to send him the facts and the consistent picture that on the direct incentive jobs there was a consistent base rate for a 60-unit hour production.

Q. Was this what the Company had told you, or did this contradict what was given you by the Company?—A. Our Research Department contradicted the position the Company had taken, that there was no base rate or no value for 60 units of production.

Q. Now, then, did you again have a meeting with the Company and negotiate further on December 19?—A. Yes; on December 19 we had a meeting with the Company.

Q. At that time did you raise a question on the base rate?—A. We again raised the question of the base rate.

Q. What explanation, if any, was given on that?—A. No explanation was given and no admission was made by the Company that there was a base rate.

[33] Q. What did they say; what did Mr. Williams say in connection with the 75- and 80-point hour?—A. It was at that meeting that I first understood, although Mr. Williams stated that it had been explained before—I think if we are to understand what I am going to say, we will have to go back to the Company proposal of October 8. At that time he explained——

* * *

A. (Continuing.) Mr. Williams explained that the figures in the 75-point hour column and in the 80-point hour column of Board's Exhibit 2 were arrived at by adding ten cents an hour to the total earnings on the incentive rates for each worker on the incentive system, explaining that this ten cents was made up of two separate five-cent increases which had been given with the permission of the War Labor Board during the war years and that because of the regulations of the War Labor Board, these two five-cent increases could not be incorporated in the base rate.

Q. Now, did Mr. Williams at that time state whether or not he admitted or denied that their incentive system had a base rate?—A. He still denied that there was any base rate.

Trial Examiner ROGOSIN. Now, which conference are you now talking about?

[34] The WITNESS. December 19, 1945. I should say, repeating, that since I am quoting what Mr. Williams said, instead of saying the War Labor Board did not permit them to incorporate increases in the base rate, I should say that the War Labor Board did not permit them to incorporate increases in the incentive system.

By Mr. PURDOM:

Q. Now, did they at that time make any counterproposal on wages?—A. They did on December 19 offer to incorporate this 10 cents per hour into the value for the hundred points that is listed in the first column of schedule of October 18, 1945.

Q. Now, did he at that time give you a schedule that would show what increases, if any, that would result in wages?—A. He did read off a few figures for the card room which would indicate that on a 75-point hour earnings, the picker tender's rate would increase from 62½ cents to 63.8 cents if the 10 cents per hour was incorporated in the rate per hundred points.

However, instead of incorporating just ten cents, he tentatively read some figures which would indicate that the Company was ready to incorporate 15 cents in the rate per hundred points for the card room.

We did not continue the discussion because we felt that this increase did not begin to meet the increase requested [35] by the Union and did not reflect needed conditions in the mill. No offer was made on the hourly workers which are listed at the bottom of each schedule in this Exhibit 2.

Q. Was there any offer of increase in the guaranteed minimum?—A. No; there was no offer made on the increase.

Q. Now, this putting the 10 cents per hour into the hundred-point column, approximately what increase did that amount to on an average? Would it be less than 1 cent an hour or 5 or 15 or how much?—A. If our information on the average rates submitted to us by the Company at the meeting of November 7, 1945 was correct, it would be an indication of the average production; for instance, of the picker tender, was about 67 points per hour.

Now, if ten cents were included in the rate per hundred points, which would make that rate 80 cents instead of 70 cents, it would mean that at an average production of 67 points per hour, the picker tender's rate would then be—or their earn-

ings would then be 67 times 8 mills or .008 with the 10 cents incorporated in the base of a hundred point hours.

Q. Well, now, Mrs. Kanun, you have before you their estimates on that increase, don't you, or the different ones——[36] A. I have the Company's estimates. I don't know how accurate they are.

Q. Well, let's take the Company's estimates.—A. All right.

Q. What do they amount to? Is that about a cent an hour or what?—A. On the picker tender, there would be 1.3 per hour.

Q. On what list?—A. On the card tender it would be 1.2 cents per hour. That would be true for the lapper tender, the comber tender; the drawing tender, it would be 1.3 cents per hour; slubber tender would be 1.3 cents per hour. That is true for the intermediate tender, the speeder tender. The oiler would be 1.2 cents per hour.

Q. Now, Mrs. Manun, did you at this conference ask for any data on production?—A. We again asked for an explanation of the amount of work or the base rate on which these earnings of 75-point hour and the 80-point hour had been computed.

Q. What did you get?—A. We didn't get any information.

Q. Did you ask for any production record on points for the workers?—A. Yes. The Company said that it would be too complicated to give us production records or points per hour produced [37] for each worker, but did give us the general information that the average point hour production for the mill was 75.6 points per hour.

Q. Did Mr. Williams give any reason as to why he wouldn't give you any information on production records or points?—A. Mr. Williams did say that he felt that I would misuse any information he might give me in order to "stir up a mess," quoting Mr. Williams.

Q. Mrs. Kanun, I will ask you to examine here Board's Exhibit 4–C, under the Roman numeral 2, the explanatory notes, and on Board's Exhibit 6, the answer to question 9, and see if that contradicts the information given you in the bargaining conferences?—A. Yes; this does contradict the position taken by the Company during all of our bargaining conferences.

Trial Examiner ROGOSIN. Pardon me. When you say "this," are you referring to both?

The WITNESS. Both the explanations. First, under Roman numeral 2 on Exhibit 4–A.

Trial Examiner ROGOSIN. Exhibit 4?

The WITNESS. 4–A.

Trial Examiner ROGOSIN. Counsel referred to Board's Exhibit 2–C. Is that correct, Mr. Purdom?

Mr. PURDOM. Four-C for identification.

Trial Examiner ROGOSIN. Well, it should be 4-C then.

[38] The WITNESS. I am sorry. It is 4-C.

By Mr. PURDOM:

Q. Let's be a little more definite. Does it contradict the information given you by the Company?—A. Yes; it does contradict. It specifically defines unit of work——

Q. How does that define it?—A. I think the best way to explain that is to read it aloud. May I?

Q. Yes. Board's Exhibit 4-C.—A. "This is called 'Explanatory notes: In many of the following statements use will be made of the term 'point.' This is an identifying characteristic of the wage incentive plan being installed, and is defined as the amount of work produced in one minute by an average normal worker operating under nonincentive or day-work conditions, plus allowances covering personal time, fatigue, and such minor delays and interruptions as are inherent in the job in question. Note that it is a measure of work, as the yard is a measure of cloth. For 60 points of work or less, the operator is paid the job base rate."

Q. Now, Mrs. Kanun, will you state how that is different from what the Company told you.—A. Well, first of all, it specifically states that there is a job base rate. At no time during any of the conferences would the Company concede that there was a base rate or give [39] us any information on that base rate.

Q. Well, what did they say, instead of conceding? Did they say that there was or was not?—A. They said that there was no base rate.

Q. All right. Go ahead. How about the 60 points? What did they say in connection with that?—A. Well, when they said there was no base rate, they also said that there was no value set on 60 points of production, that 60 points in any way had no relationship to their incentive system.

Q. Now, does question 9 on Board's Exhibit 6 for identification say substantially the same thing?—A. It says that identical thing except that it is an explanation of the point system in application to the weave room, weavers, and loom fixers.

Q. And does that also contradict the information given by the Company in the bargaining and in the negotiations?—A. That also contradicts the information given by the Company.

Q. Now, Mrs. Kanun, was the only increase offered on this December 19 conference, to recapitulate a minute, to put the 10 cents an hour into the 100 point—was that the only——A. That was the only increase offer made by the Company.

Q. That was as to points.—A. There was some mention of reconsidering their position [40] on the hourly workers.

Q. Now, did they make an offer on a third shift differential at that time? —A. Yes; they did make an offer on the third shift differential, which was based on a graduated scale of point hours of production, average point hours of production, on a departmental basis.

Q. Mrs. Kanun, I will show you Board's Exhibit 12–A through 12–F for identification [document handed to witness].

Q. In handling the wage negotiation, did you arrive at any such agreements as contained in Board's Exhibits 12–A through F with the Company?—A. No.

Q. Did the company ever offer in its wage negotiations with you any such wages or increases as therein specified?—A. No.

Q. When was the first that you ever heard of that?—A. That was on January 3, 1946, when I saw a copy of the letter and the list of wage increases put into effect by the Company as of December 31, 1945.

Q. Did the Company know that you were handling the wage negotiations and were present at those conferences?—A. Yes.

Q. They saw you there?—[41] A. Yes. They acknowledged my presence by addressing some of their comments to me directly.

Q. Did they consult with you in any respect about that Board's Exhibit 12–A through F?—A. No. I was not aware of it until January 3, 1946, which is, of course, four days after it was put into effect.

* * *

CROSS-EXAMINATION

* * *

[42] By Mr. WILLIAMS:

Q. I asked you if you object to employees getting a wage increase unless you can get credit for getting it for them?—A. No, Mr. Williams, I don't.

Q. You are really concerned with the welfare of the employees, aren't you, Mrs. Kanun?—A. Yes, Mr. Williams.

Q. So, for the employees to get an increase, a wage increase, you would be terribly disappointed about it, wouldn't you?—A. No. I am entirely in favor of it.

Q. Why are you complaining about the fact that the employees at Crompton-Highland Mills got a wage increase?

* * *

A. First, I object to the wage increase because it fell far short of that requested by the Union. Secondly, it was a dis-

criminatory wage increase entirely ignoring the people at the common laborer rate. We felt that the intentions of the Company in giving that wage increase without any opportunity by us to make sure that the workers held the wage increase was something to which the Union had to object.

By Mr. WILLIAMS:

Q. Mrs. Kanun, did you understand that the Company, by giving a wage increase, in any wise precluded [43] you from asking for more?—A. No.

Q. As a matter of fact, isn't it your policy to always ask for more?—A. It is our policy to ask for what our workers are entitled to, Mr. Williams.

Q. You started off asking in this case for 65 cents minimum?—A. Yes.

Q. You reduced that demand to a 5-cent general increase?—A. And a 60-cent minimum.

Q. And a 60-cent minimum. The employees got a 5-cent general increase, except that the employees at the minimum were not increased at all; otherwise employees got practically a 5-cent increase. So you then increased your demand back to 65 cents, didn't you?—A. Mr. Williams, I would question the statement that the employees actually got a 5-cent increase. My information is that in their take-home pay, they are not consistently getting a 5-cent increase.

Q. Well, they got some increase and so you——A. I am in no position to testify as to that until I see their average hourly earnings for the period since the increase was put into effect.

Q. You don't think the Company has made an increase?—A. I think it is likely the Company has manipulated the [44] incentive system so the wage increase may be canceled.

* * *

[46] By Mr. WILLIAMS:

Q. Mrs. Kanun, in the earlier part of your testimony, you stated, I believe, that the original War Labor Board Order setting up the peg-point rates for the Twenty-three Mills which were affected by this Order did not define how peg points were to be applied in incentive rated mills. Did you not make that statement?—A. Yes, I did.

Q. You are not familiar with the paragraph of that order which reads as follows: "If, in a particular case, one of the above job classifications is wholly or partly compensated on an incentive or piece rates, the applicable guide post specified above shall be deemed to refer to average straight-time hourly earnings. The piece work or incentive rates shall be fixed by collective bargaining to yield average straight time hourly

earnings not less than the rates as indicated above."—A. I was familiar with the paragraph. I still don't think that specifies absolutely how the peg points are going to be applied to incentive rate mills. I know of no article [47] or rule by the War Labor Board or the Southern Textile Commission which so fixes that point.

Trial Examiner ROGOSIN. Mr. Williams, would you for the record identify the document from which you were reading?

Mr. WILLIAMS. It was a copy of the directive order of the National War Labor Board, dated February 20, 1945, in the matter of the Twenty-three Southern Cotton Textile Mills and Textile Workers Union of America, Case Nos. 111–5110–D, 6318–D, 5822–D, 2527–D.

* * *

[48] By Mr. WILLIAMS:

Q. Mrs. Kanun, in your direct examination you stated that I told you in bargaining that the guaranteed minimum rates on the wage schedule of October 18, 1945 did not have any relation to the schedule but was simply historical.—A. Yes.

Q. Mrs. Kanun, didn't I actually tell you that it appeared to me that the guaranteed minimum rates were not perhaps properly related to the wage schedule and that it seemed to me that those rates should bear a definite percentage relationship to the earnings at a 75-point hour; isn't that what I told you?—A. You at one time may have said that, but you also said the other.

Q. Didn't I, Mrs. Kanun, tell you that I thought we should agree in bargaining on a new schedule of guaranteed minimum rates?—A. I don't remember your saying that.

Q. Mrs. Kanun, didn't I ask you to suggest a percentage [49] figure below the earnings for the 75-point hour at which all guaranteed hourly rates should be established?—A. You may have.

* * *

The WITNESS. Mr. Trial Examiner, I think in order that Mr. Williams' very suggestive questions do not mislead whoever is going to review this record, I would like to state at this point, and I feel I have a right to, that on the question of a guaranteed minimum, it has happened to be the Union policy to fix that minimum at a percentage of the base rate, not at a percentage of a hypothetical and an expected earnings figure, which would have no meaning.

By Mr. WILLIAMS:

Q. Mrs. Kanun, it doesn't make any difference whether you and I were able to agree. The question is we did in our effort—

As a matter of fact, I suggested I thought the guaranteed minimum rates might either be related to hourly earnings for a 75-point hour or to the peg rates which the War Labor Board had established, didn't I?—A. I don't remember your referring to the peg rates, since [50] it was a discussion—you refused to discuss—since the peg rates were something we suggested and you refused to accept.

Q. Didn't I go to great pains to great pains to show that our average earnings, as well as our earnings for a 75-point hour, were, in every instance except in maybe 3, well in excess of the peg point rates for those job classifications, and didn't I show you in those three cases it was less than a penny under?—A. Mr. Williams, didn't I tell you that any average figures you gave us at any time were not complete since they only represented a third of the workers in the mill?

* * *

[51] The WITNESS. Mr. Trial Examiner, I can't understand that question, because I don't know how to evaluate how much pain Mr. Williams went to. I couldn't answer the result.

Trial Examiner ROGOSIN. It seems to me that is a perfectly proper objection, Mr. Williams.

By Mr. WILLIAMS:

Q. Well, regardless of the amount of pain I went to, Mrs. Kanun, in trying to get the point across didn't I point out to you that the average hourly earnings on October 18, 1945, on the incentive rated jobs at Crompton-Highland Mills were well in excess of the peg point rates?—A. No; you didn't, Mr. Williams.

Q. I didn't tell you that?—A. You did say so, but you did not effectively convince me of your point.

* * * *

By Mr. WILLIAMS:

Q. Mrs. Kanun, in presenting to you the wage schedule of October 18, 1945, we told you, did we [52] not, that that was simply a statement of our current rates of pay and did not involve any wage increase whatsoever?—A. Yes; you said it was a statement of your current rates of pay.

Q. It didn't purport to be a wage increase, did it?—A. It was supposed to be the Company's counterproposal on wages. It could not actually be a current statement of the rates of pay because you accompanied it with a table of notes indicating which jobs were already on piece work. It was an estimate of what you expected your current rates of pay to be.

Q. Mrs. Kanun, have you one of those October 18 statements in front of you?—A. Yes.

Q. That is a document which has been identified as Board's Exhibit 2, is it not?—A. Yes.

Q. That document shows you, with respect to each job and classification on the incentive pay plan, the rate per hundred points for that job classification, doesn't it?—A. Yes.

Q. It shows you the earnings at a 75-point hour for that classification?—A. Yes.

Q. And it shows you the earnings at an 80-point hour for [53] that classification?—A. Yes.

Q. And it shows you the guaranteed hourly rate to be applied on the daily basis?—A. Uh, huh.

Q. Is that right?—A. Yes.

Q. Didn't I tell you, Mrs. Kanun, that we would guarantee those rates to produce those earnings at those point hours?—A. I am not sure I understand that question, Mr. Williams.

Q. Didn't I tell you that we would guarantee that the rates per hundred points shown on that schedule would produce at 75- and 80-point hours the rates we showed on that schedule?—A. That sounds familiar, but I am not sure what it would actually mean in the interpretation of the schedule.

Q. I just asked you: Did I tell you that?—A. Yes; I think you did.

Q. Did I tell you that we would guarantee those rates against reduction during the life of the contract unless it was done by mutual agreement between the Company and the Union?—A. Yes.

Q. Didn't I tell you that we would guarantee a continuation of those earnings at those point hours throughout the life [54] of the contract unless otherwise mutually agreed between the Company and the Union?—A. Yes.

Q. The negotiations by October 18, you stated in direct examination, were deadlocked.—A. Yes.

Q. And the Union broke off the negotiations and gave notice of intention to strike.—A. No.

Q. You didn't give notice of intention?—A. I didn't state the Union broke off negotiations.

Q. You didn't—You did give notice of intention to strike, didn't you?—A. Yes.

* * *

Mr. WILLIAMS: I would like to have identified as Company Exhibit 1, document captioned on the fly sheet, "Crompton-Highland Mills; Summary of Average Earnings under Incentive System (Based on a period of four consecutive weeks), October 26th, 1945," consisting of the fly sheet plus four pages.

(Thereupon the document above referred to was marked "Respondent's Exhibit No. 1" for identification.)

By Mr. WILLIAMS:

Q. Mrs. Kanun, I ask you to look at the document which has been identified——

* * *

[55] By Mr. WILLIAMS:

Q. Was that schedule of average hourly earnings on our incentive rated jobs furnished to you at your request by the Company, Mrs. Kanun?—A. Yes.

Q. That was furnished to you on November 7 in response to a request which you made on October 18; is that right?—A. Yes.

Q. Mr. Kanun, I believe you stated on direct examination—this may not be exactly correct; I wasn't paying too good attention and I want to make sure—It is true, is it not, that each time you presented a demand for a wage increase we responded by explaining to you—stating, at least—that our wage rates and earnings were already in excess of the earnings for comparable work in this locality in the industry?—A. That was the explanation you made.

[56] Q. And we declined to give any wage increase on that account?—A. That was the position you took.

Q. That was our position?—A. Yes.

Q. And each time a wage increase was demanded, we explained our refusal to give it to you by stating that our current wage rates and earnings under our incentive plan were already in excess of rates for comparable work in this locality and industry; is that right?—A. Yes; that was the explanation you made.

Q. And we also stated to you in further explanation of our refusal to give any wage increase that our wage rates and earnings under the incentive plan, average earnings, were in excess of the guide rates established by the War Labor Board and the Southern Textile Commission; that was our contention?—A. Yes.

Q. And that was the basis on which we declined to give the wage increase?—A. Yes.

Q. Is that right?—A. That was the basis you stated.

Q. Now, each time that matter was discussed, did we not remind you and the Union Committee that Crompton-Highland [57] Mills had always been among the first of the mills to make a wage increase in this industry and locality?—A. You made that statement.

Q. Did we not also state to you each time the matter was discussed that whenever a wage increase was appropriate and proper, we would be among the first in this area and locality and industry to make the wage increase?—A. Yes.

Q. Mrs. Kanun, do you remember on November 7 I presented a proposal to you with respect to wage rates and work assignments?—A. Yes.

Q. All right.

Mr. WILLIAMS. I would like to have this document, captioned at the top, "Amendment of Company Counterproposal Offered October 18, 1945, Formally Submitted November 7, 1945," identified as Company Exhibit 2—or Respondent's Exhibit 2.

* * * * *

(Thereupon the document above referred to was marked "Respondent's Exhibit No. 2" for identification.)

By Mr. WILLIAMS:

Q. Mrs. Kanun, is that the proposal which we formally presented to you on November 7, 1945?—A. Yes.

[58] Q. You rejected it on November 7, 1945 without reading it, didn't you?—A. I didn't reject this proposal, Mr. Williams.

Q. You mean to say that in the conference in the Conciliation Service Office when I handed you that proposal that you didn't say that proposal without reading it, would not be acceptable?—A. I didn't say that.

Q. Well, is it acceptable?—A. I haven't had a chance to study it thoroughly, but that——

Q. You haven't read it yet?—A. Mr. Williams, I have read it. That end of the negotiations was not my responsibility. I don't think I can answer your question.

Q. In spite of the fact that you were handling the wage portion of the negotiations, you haven't since November 7 read the proposal which we made to you with respect to wage rates?—A. I told you a moment ago that I have read it.

Q. Mrs. Kanun, you realized that in that proposal and in all proposals which the Company made to the Union throughout bargaining in this matter, we included a provision whereby the closing of this contract would not preclude further bargaining with respect to wages, didn't you?—A. Yes.

[59] Q. And each time you made a wage demand, I explained our refusal to accede in your demand by telling you that our wage rates were already higher than the rates in comparably situated mills and each time I explained that we always had been among the first to make wage increases when wage increases were being made and assured you whenever an occasion for a wage increase occurred we would be among the first to make the wage increase; I also called your attention to the fact that we were offering to contract with you for a wage reopening at any time; is that true?—A. Yes.

Q. And at the conference on December 19, at which we did offer to, in effect, increase wages for the incentive rated workers by including the two 5-cent increases in the incentive rates, I offered to read off to you the figures as to the net increases which would result from that procedure, didn't I?—A. Yes.

Q. And I did read one or two of them?—A. You read one department.

Q. And then you said you weren't interested in hearing any more of that?—A. That's right.

Q. I told you, did I not, that those earnings, that adding those two increases into the incentive rates would increase [60] earnings at a 67-point hour, 10 cents; and at an 80-point hour, 12 cents; didn't I?—A. You didn't mention the 67-point hour, and I don't remember your mentioning the 80-point hour.

Q. As a matter of fact, by that time you weren't any longer trying to agree with us and weren't paying much attention to what I say, were you?—A. That is not true.

Q. It is true, though, when I tried to tell you what the Company's proposal for a wage increase was, you said you didn't want to hear any more about that?—A. That was because your proposal was entirely inadequate.

Q. You knew it was entirely inadequate before you heard what it was.—A. That is not true.

Q. Well, you wouldn't let me give you the figures, would you?—A. That is not true. I had your entire proposal when you proposed to incorporate 10 cents and the 100-unit hour.

Q. And when I tried to explain to you that incorporating the two wage increases [which] the War Labor Board had not permitted us to put into the incentive rate would result in increases from 10 to 12 cents from a 67- to an 80-point hour, you said you didn't want to hear those figures at all.—A. That is not true.

[61] The WITNESS. Mr. Trial Examiner, I think that unless Mr. Williams' present statements which he is presenting in the form of a question are corrected immediately, the record is going to appear erroneously——

* * *

The WITNESS. I would like to make an explanation of that last point. When Mr. Williams asked me whether he told me that the proposed incorporation of the two 5-cent increases would result in a total increase of 10 to 12 cents an hour on production of 67- to 80-unit hours, I had never heard that conclusion of the Company's proposal. If Mr. Williams means that at their old evaluation of a 67- to 80-point hour that was the total result, he is misrepresenting the situation for the rec-

ord, because everyone in the mill [62] on incentive pay got the two 5-cent increases that Mr. Williams is referring to, on top of their earnings on the incentive system; so that when he is referring to 10 or 12 cents, he is merely repeating the 10 cents that had always been given to the workers since those increases had been in effect.

Mr. WILLIAMS. Mr. Trial Examiner, may I say that she is exactly right. I did misstate that thing and didn't realize it until I sat back down and Mr. Pickford showed it to me. She is exactly right. Putting those figures into the incentive system, would have been the same dime they had been receiving; it would have been a 2-cent increase at an 80 hour.

Trial Examiner ROGOSIN. Is that what you wanted to clarify?

Mr. WILLIAMS. I am very sorry. Mrs. Kanun is exactly right and I didn't realize it until Mr. Pickford told me.

* * *

[64] (The document heretofore marked "Board's Exhibit No. 4–C" for identification was received in evidence.)

* * *

[67] (The document heretofore marked "Board's Exhibit No. 6" for identification was received in evidence.)

* * *

[68] (The document heretofore marked "Board's Exhibit No. 10" for identification was received in evidence.)

Mr. WILLIAMS. Mr. Purdom has asked us to stipulate, which we are willing to do, that the incentive wage plan of Crompton-Highland Mills was extended into the weave room of the mill pursuant to the approval of and with the approval of the War Labor Board on Form 10 Application No. 4–31562.

* * * * *

[69] (Continuing.) Said application having been approved by the Fourth Regional War Labor Board on April 12, 1945.

* * *

Is it so stipulated, gentlemen?

Mr. PURDOM. It is.

Trial Examiner ROGOSIN. Does the Union join in that stipulation?

Mr. DOUTY. Yes.

Trial Examiner ROGOSIN. It may be so stipulated.

Redirect examination by Mr. PURDOM:

Q. Mr. Kanun, briefly, tell us if Respondent's Exhibit——

Trial Examiner ROGOSIN. "Summary of the Average Earnings?"

MR. PURDOM: Yes.

Trial Examiner ROGOSIN: That is 1 according to my recollection.

By Mr. PURDOM (continuing):

Q. Respondent's Exhibit 1 furnished you with all of the information pertaining to wages and production that you had requested, and if it did not, why you needed the other information to bargain presently on wages?—A. This schedule of average earnings covers only approximately a third of the workers in the mill. We could not advise our committee to conclude any wage negotiations unless they had some understanding of the re-[70]lationship of how much work they did for the amount of money they were taking home. Now, unless we had the actual earnings of all the workers in the mill, we couldn't have a complete picture of the effect that the current wage structure actually had, nor could we evaluate the Company's repeated statements that their earnings or that their wages were higher than any comparable mill unless we knew how much work their workers did or how the incentive system in the Crompton-Highland Mill affected its workers so that we could compare it with the other mills of which we had knowledge and where we had a contract. From the knowledge that we did have from these hourly averages, as we in turn stated to the Company, the other mills where we had contractual relations and where similar incentive systems existed; the average earnings in those other mills were much higher than the earnings the Company stated as being the highest in the territory. We could not accept the Company's statements, nor could we conclude any wage negotiations unless we had the complete information, both on the basis of the incentive system and approximately what units of production were used for that basis and on the average earnings of all the workers in the mill.

Q. Now, how did it affect you and your negotiations to tell you that there was no 60-point base or 60-point hour, if in fact there was such?—[71] A. Well, we in our proposals to the Company had to correlate the balanced wage scale, for example, with something concrete that already existed in the mill. We knew that somewhere must be a beginning point and that that point we were reasonably certain even in the Crompton-Highland Mill was a 60-unit base.

Q. Now, would it make any difference if you made an increase on a 60-point base and, say, a hundred-point base? Explain that to the Examiner.—A. Yes; it would make a difference and I think that the simplest way of explaining it is to

do arithmetic on the elementary basis so that both the Examiner and the reviewer who reads the record will understand.

Suppose the value of a hundred points was a dollar. That would mean that the value of 60 points would be 60 cents. But if a 10-cent increase were proposed, if that 10-cent increase was put on the hundred-point level, that would then mean that each unit of production would be 1.1 cent or 0.011. However, if a proposed 10-cent increase were put on 60 points of production, then each unit of production would be zero—or rather 0.0116, or one penny and sixteen mills,—well, I think I had better not try to articulate it since I may make a mistake on that.

Now, to evaluate how much that increase would mean if a worker produced 60 units per hour, on the increase where [72] the 10 cents was added on the hundred points, if we multiply 60 times the value of one point on that level, which is 60 times 0.011, the earnings of that worker would be 66 cents.

But suppose the same worker producing 60 points had received his increase on the 60 points. Then if we multiply 60 times 0.0116, which is the value of each point when the increase of 10 cents is placed on the 60-point value, his earnings would be 69.6 cents per hour.

In other words, if the 10 cents is placed on the 60-unit base, rather than the hundred-unit base, the worker would gain a benefit of 3.6 cents per hour at a 60-unit level of production.

Of course, if he made progressively more production from 60 up, his percentage of increase would be greater.

* * *

By Mr. Purdom:

Q. State whether or not, if my production points were 75, for illustration, and a 10-cent raise were given, if it were on a 60-point base, would it be greater [73] or less than if the 10-cent increase were on a hundred-point base?—A. Your increase would be greater if the increase had been put on the 60-point base.

Q. Therefore, state whether or not the smaller the base, the greater the increase.—A. That is correct.

Q. Now, Mrs. Kanun, Board's Exhibit 12-A through F shows the increases granted January 1, 1946, as of December 31, 1945. Had the Company offered those increases to the Union in any counterproposal?—A. No.

Q. Had it offered increases substantially the same as that?—A. No.

Q. Were there increases offered less or greater than that in the counterproposal?—A. The only increase offered was much less than that actually put into effect.

Q. Had the union by or on or at any time prior to January 1, 1946, turned down or refused a proposal of wage increases as stated in Board's Exhibit 12-A through F?—A. No.

* * *

[74] (The documents heretofore marked "Board's Exhibits Nos. 12–A through 12–F" for identification were received in evidence.)

* * *

Re-cross examination by Mr. WILLIAMS:

Q. Mrs. Kanun, "Statement of Average Hourly Earnings," dated October 26, 1945, identified as Respondent's Exhibit 1, showed only the average hourly earnings for the incentive rated employees, didn't it?—A. That was your statement.

Q. Did you need to know the average hourly earnings for straight hourly rated employees, Mrs. Kanun?—A. No; not for straight hourly rated employees.

Q. That is the complaint you made a moment ago, that we didn't tell you the average earnings for the straight hourly rated employees.—A. May I repeat myself?

Q. Yes.—[75] A. The complaint I made was that it didn't contain the averages of all the workers in the mill who were on some form of incentive or piece-rate system.

Q. You mean you didn't think that that schedule of average hourly earnings, dated October 26, identified as Respondent's Exhibit 1 showed average hourly earnings of all employees or standards in the mill?—A. That's right.

Q. I told you it didn't, didn't I?—A. Yes; you did.

Q. And you don't think I told the truth?—A. From my knowledge of the Crompton-Highland Mill, I don't think 66 percent of the people are on straight hourly rates.

Q. No, ma'am. What makes you think that exhibit indicates 66 percent of the people are straight hour?—A. This only gives approximately 30 percent of the employees of the Crompton-Highland Mill.

Q. Mrs. Kanun, the rate schedule dated October 18, 1945, identified as Board's Exhibit 2 showed you the rate per hundred points which I told you, did I not, was a per-point rate expressed in rates per hundred points to simplify calculations?—A. Yes.

Q. I explained to you, for example, looking at the first [76] place, the card room; take the card tender rate. That shows a rate per hundred points of 75 cents. I explained to you that that rate per point would be 0.0075, didn't I?—A. I can understand that now, Mr. Williams. I don't remember your explaining it on October 18.

Q. You may not have understood it, but didn't I endeavor to explain it to you: October 18 and again on November 7 and 8,

1945?—A. I can't remember; since I may not have understood it.

Q. You knew, didn't you, Mrs. Kanun, and I explained to you in the conferences, that you could take a rate per point and multiply it by 60 and get the per-point-hour earnings at a 60-point hour?—A. I can understand that, but why should I—I can't ask questions.

The WITNESS. Mr. Trial Examiner, I think I would have to explain that in order to correct Mr. Williams' leading question.

* * * *

[77] The WITNESS. I don't understand how Mr. Williams assumes that since he refused to admit any relationship to the 60-point hour, that I would have multiplied it. However, I did try after the meeting of October 18 to multiply the point value, that is, the value per point in order to understand how he arrived at his figures for the 75-point hour and 80-point hour; and at that time I could not understand the schedule.

I am not blaming anybody except that from this schedule no one could deduce, without additional information, a relationship between the 100-point column and the 75- or 80-point column.

Mr. WILLIAMS. That, Mrs. Kanun, is only because you didn't note, weren't listening, or didn't absorb the fact that I explained to you that we had made two 5-cent increases which War Labor Board rules—the condition of the War Labor Board approval had to be flat across-the-board increases and were added to incentive earnings rather than included in incentive rates.

The WITNESS. I assume this is still part of the explanation. I would like to call the attention of the Trial Examiner, and make this a part of the record, that since that information about the two 5-cent increases was not incorporated in this schedule, that to list values of a 75-[78] point hour and an 80-point hour without that explanation would indicate the people who produced that much work or that many points earned these rates when actually, according to the plan in existence, that was not true, these rates including 10 cents above the actual earnings on the incentive system. It was for that reason that we didn't understand. Since I—if Mr. Williams made that explanation, I missed it at the first several meetings and did not understand it on December 19; it can easily be seen how misleading this proposal would be to someone who is not familiar with it.

I think it is important that we didn't understand it. At least, I didn't, and I was preparing these schedules.

Q. Mrs. Kanun, didn't we explain to you that in order to convert the per point earning into earnings at a 1y point hour, you would multiply the point hour earnings by the rate per point and add 10 cents to reflect the two five-cent increases which we had not been permitted to work into the incentive rates?—A. No.

Q. You mean I didn't try to or you didn't understand?—A. Mr. Williams, my first recollection is December 19. I can only answer "no" to the way you put your question.

Mr. WILLIAMS. The witness is with you.

Redirect examination by Mr. PURDOM:

Q. Mrs. Kanun, did Mr. Williams or [79] anyone else representing the Company ever state that a point was equivalent to one minute's normal work so that work for a normal hour would be 60 units?—A. No; the points were never related to the amount of work or to any correlative differential.

Q. Is that what they told you?—A. They never told us.

Q. Did they tell you that it was not related?—A. They refused to identify it as having any relationship to a unit of work.

Q. Or a 60-point base?—A. There was never any admission of any base rate existing or any base existed.

Q. Did you ask them?—A. Yes; we repeatedly raised the question that they must have some base rate, from our knowledge of the C. L. Stevens Point System.

Q. What did they say?—A. They denied there was any base rate.

Q. Will you explain for our benefit what this point system is, what goes into it and what is a unit, and so forth, under the point plan?—A. As I understand it, Mr. Purdom, a point is a means of measuring a unit of work, and that in order to relate or to compute a worker's earnings, after the unit of work has been [80] measured and a specific amount of work set up, then some money value is set for that unit of work.

What we were trying to approach in these wage negotiations was some understanding of the relationship of the unit of work to the amount of money that was currently being attributed to that amount of work, so that in our negotiations we could request and propose to the Company a wage scale which we considered fair.

We were aware that something was wrong because our members insisted that they were not being adequately paid for the amount of work they did compared to the wages they had been earning before.

We did not go into the Company and state that there was something wrong with the point system. We specifically

stated that we were requesting this information so that we could evaluate what actually was happening in the mill, then articulate our position.

By Trial Examiner ROGOSIN:

Q. Mrs. Kafun, did you have any familiarity with this so-called point system before you embarked on your collective-bargaining negotiations with this Company?—[81] A. My only familiarity was with one other mill where a point system existed, but it was a mill where we had bargaining relationship for something like five years and where, when we asked for information, we got it, the value for a 60-unit base and everything else we asked for. My only familiarity with it was that mill, and what information I got in the program of negotiations here from our research department.

Q. Well, are you familiar with the method which is employed in arriving at these point systems?—A. Yes. Not from personal experience; purely from reading and getting information verbally.

Q. Are you familiar with the so-called Stevens point system?—A. Only slightly.

Q. Do you agree—or do you feel if you would be called upon, you could state for the record in general the principles that are employed in the point system?—A. Only that I could state what is employed in any incentive system generally. I don't feel that I would want to pose as an infallible authority on it. I don't want to be presumptuous on my knowledge, because it is limited.

Q. Well, are the figures, whether they be 60 or 75 or 100, are those arbitrary figures that are used, or are they based upon some time-study demonstrations?—[82] A. Insofar as I know, they are based on a time-study demonstration and are evolved after allowances are made for fatigue time, a certain amount of time taken, for instance, for the flow of material from one job to another, and all the other factors which would be incorporated in a job.

I know from reading some of the material—take for example a single job like a weaver's job, that within that job are certain elements occurring in the job. For instance the weaver patrols the front of his loom and he patrols the back of the loom, and he starts and he stops it, or if it has a broken thread, he fixes it. And each one of those job elements are studied and evaluated according to the amount of time it takes to do each element, and then a proportionate number of points allowed for each one of those elements, depending on how many go into the job and how long each take.

In order to do so, you have to start with a base number of points, because if you were using a thousand points as a unit, you would allow more points for each element than if you were using a hundred.

Q. That brings me to the question that has been troubling me. How is that number of points determined?—A. Well, the customary practice is to use the 60-point base.

Q. So that each point is equivalent to one minute of work?—[83] A. Yes. I mean, in the 60-point, each point is equivalent to one minute of work.

Mr. WILLIAMS. In way of illustration, if I may, I would like to ask one more question.

Re-cross-examination by Mr. WILLIAMS:

Q. Do you realize that the increase was made on January 1, 1946 as of December 31, 1945, the two five-cent increases were put into the incentive rates at a 60-point hour; do you realize that?—A. I was aware that once you incorporated them. I was not aware you had put them in the 60-unit hour. I was under the impression you had put them under the 100-unit hour, but once you had gotten rid of that floating ten cents, Mr. Williams—this is becoming a free-for-all again—if then made no difference whether your increase was on the 100-unit hour.

Q. It would, of course, make a difference?—A. Yes; it would make a difference ——

Q. It would make a difference whether increase is put in a 60-, 70-, 75- or 80-point hour; it could be put in at any place; any general increase could be put into the incentive plan at any given point or on any selective point, on a 60-point hour, a 70-point hour, an 80-point hour?—A. No; not with the same effect.

Q. Not with the same effect, but it could be put in at [84] any point; so that where it goes into the incentive plan, whether at 60, 65, 67, 70, or what not, point hour is a matter for bargaining, isn't it?—A. Yes.

Q. And we tried to bargain with you about it, didn't we?—A. You did not try to bargain as to where the increase would go into effect.

Q. We told you on December 19 we were willing to put those two increases into effect; we told you that at a 67-point hour the two increases would amount to still a dime, the same thing it always amounted to, but an 80-point hour would amount to 12 cents or 2 cents above, so we were obviously putting the unit in at 67 on that day, weren't we?—A. I would like to answer—at least eliminate part of that which is not a fact; that is, the 67-point hour. You never raised any point or value less than

75 points. In my recollection, that was the lowest figure of production ever mentioned in any Company meeting.

Examination by Trial Examiner ROGOSIN:

Q. Could this incentive system or this point system be adapted to employees working either on a piece-work basis or an hourly rate?—A. Well, with modifications. A straight piece work is different from an incentive system.

Q. Well, in this plant were the employees all on hourly or [85] piece work?—A. No. All of the workers were, since 1942, with the exception of a small group of workers such as sweepers and common labor workers and maintenance workers, every other worker was on some form of incentive system. It was being broadened and new values and new points being placed in the weave room last spring, but the spinning and card rooms had been on some form of incentive system since 1942.

Q. That, I take it, necessarily includes some form of piece-work basis?—A. Yes; that's right. The weave room was, as I understand it, on a straight piece-work basis until this incentive system and similar systems, the Stevens system, was extended into the weave room last spring. That is my understanding.

Q. During your bargaining relations with the Respondent were you the only representative of the union participating in the bargaining?—A. No. Mr. Douty participated in all of them. I was not in all of them.

Q. In the actual conferences themselves?—A. In the actual conferences themselves.

Q. Do I understand correctly that you were negotiating and bargaining on behalf of all the production employees?—A. All production and maintenance.

Q. And maintenance. It was not limited to any particular [86] department?—A. No. It was the entire mill.

Trial Examiner ROGOSIN. Anything further, gentlemen, of this witness?

Redirect examination by Mr. PURDOM:

Q. You bargained for the unit as set out in this case?—A. That's right.

Trial Examiner ROGOSIN. You may be excused.

(Witness excused.)

Trial Examiner ROGOSIN. Am I correct in my understanding, gentlemen, as I read the Pleadings, that the question of the appropriateness of the unit or the majority representation of this Respondent——

Mr. WILLIAMS. Union.

Trial Examiner ROGOSIN (continuing). Yes; of this Union,

and the certification are not matters which are in issue in this proceeding?

Mr. WILLIAMS. No question of collective-bargaining unit and no question about the fact that Respondent was duly and properly certified.

Trial Examiner ROGOSIN. That the Union—you made the same mistake I did.

Mr. WILLIAMS. No question that the Union was duly and properly certified as the sole and exclusive bargaining [87] agent representative of the bargaining unit, which is described in paragraph 5 of the complaint.

Trial Examiner ROGOSIN. On all of the dates?

Mr. WILLIAMS. No, sir. I call your attention to the allegations in paragraph 2 of our Answer, in which we say this "Answering the allegations of Paragraph VI of said Complaint, Respondent admits that the National Labor Relations Board issued its Certification of Representatives as set forth and alleged in said paragraph, and admits that said Certification of Representatives was duly and properly issued. Except as so admitted, the allegations of said Paragraph VI of said Complaint are denied, for that Textile Workers Union of America has failed and refused to properly and in good faith exercise the rights, and perform the functions of the sole and exclusive collective bargaining agent and representative of the employees in the bargaining unit described in Paragraph V of said Complaint. * * *"

Trial Examiner ROGOSIN. Mr. Williams, I have no desire to question you, but I assume that your intention in Paragraph 2 as it appears——

Mr. WILLIAM. Yes; our purpose under paragraph 2 of the Answer is to ask the Board and the Court to extend the decision of *Steele* against *L. & N. Railroad* and *Wallace Corp.* vs. [88] *National Labor Relations Board* to hold that this Union by putting its interest paramount to the interest of the employees has forfeited its bargaining authority.

Trial Examiner ROGOSIN. I didn't intend to get into a discussion of your theory [of your defense], and you did quite properly attempt to answer my question. I simply wanted to clarify the issue. We would not be concerned in taking evidence on the matter to which I refer.

Mr. WILLIAMS. There is no argument on the description of appropriateness of the unit except for the fact that the Board did certify the Union as the bargaining representative of the employees in that unit.

Trial Examiner ROGOSIN. The point in my bringing up this point was particularly whether the Respondent was contending that the Union did not represent a majority of the employees on any of the dates of these bargaining contracts.

Mr. WILLIAMS. We don't make any point of it.

* * *

[89] (The document heretofore marked "Board's Exhibit No. 13" for identification was received in evidence.)

* * *

[91] Let me say for the clarity of the record that in logical sequence, Company's Exhibits 3 and 4 should have preceded Company's Exhibit 2. For logical sequence, they should have been considered in the order of 3 first, 4 second, and 2 third. Perhaps we can make a stipulation that Company Exhibits 3 and 4 include various riders clipped to pages at various points, various interlineations and erasures and marginal dates. With respect to Company Exhibit 3, the Company Counterproposal submitted August 31, 1946——

Trial Examiner ROGOSIN. 46?

Mr. WILLIAMS. 1945. (Continuing.) The marginal dates in red pencil reflect the dates on which tentative agreements reached in bargaining with respect to these [92] provisions. The marginal dates on the attached riders reflect the dates on which the insertion of these matters was tentatively agreed to in collective bargaining. And the marginal dates also on erasures and interlineations reflect the dates in the course of bargaining on which those erasures or interlineations were tentatively agreed to, all agreements in bargaining having been mutually agreed between the Company and the Union, being tentative agreements until the complete contract was agreed upon. It was understood, in other words, that at the beginning of the bargaining that all agreements reached in the bargaining would be tentative until the complete contract was finally agreed upon.

Mr. PURDOM. Yes.

Trial Examiner ROGOSIN. Does the Board agree to that stipulation?

Mr. PURDOM. Yes. Of course on the dates and so forth and the interlineations, checked and accepted as correct unless found to be in error, in which case Counsel will make appropriate corrections.

Trial Examiner ROGOSIN. I notice as you were leafing through your exhibits, there appear to be paragraphs that have been stricken. You refer to them as erasures?

Mr. WILLIAMS. That's right. With respect to Company Exhibit 4, which is a memorandum of the provisions agreed upon in bargaining and the Company proposals as to provisions [93] not agreed upon, that memorandum was made up and completed on October 12, on which date copies of it were furnished to the Union, and it was used as the basis for subsequent bargaining.

This Exhibit 4 gives effect to all interlineations, erasures and riders in Exhibit 3, and the typewritten dates simply carry forward the dates which were in the margin of Exhibit 3 and show the dates on which those provisions as amended in prior bargaining were finally agreed to, still subject to the tentative agreements which were mentioned a minute ago.

The erasures and interlineations and riders attached to Exhibit 4 reflect bargaining agreements and the dates of bargaining agreements made after Exhibit 4 was prepared; that is, after the bargaining on October 17, 1945.

Trial Examiner ROGOSIN. The Union stipulates as to the statement with respect to the exhibit?

Mr. DOUTY. Yes.

Trial Examiner ROGOSIN. The Board does?

Mr. PURDOM. The Board so does.

Trial Examiner ROGOSIN. Very well. Respondent's Exhibits 3 and 4 for identification will be received.

(The documents heretofore marked "Respondent's Exhibits Nos. 3 and 4" for identification were received in evidence.)

* * *

[94] (The document heretofore marked "Respondent's Exhibit No. 2" for identification was received in evidence.)

* * *

[95] (The documents heretofore marked "Board's Exhibits Nos. 2 and 3" for identification were received in evidence.)

* * *

[96] (The document heretofore marked "Respondent's Exhibit No. 1" for identification was received in evidence.)

* * *

(The document heretofore marked "Board's Exhibit No. 14" for identification was received in evidence.)

Mr. PURDOM. As Board's Exhibit 16 we offer in evidence Wage Proposal to Crompton-Highland Mills, Griffin, Georgia, dated January 19, 1946, which was mailed to the Company.

(Thereupon the document above referred to was marked "Board's Exhibit No. 16" for identification.)

* * *

[97] Mrs. CLARA KANUN (Board witness),

* * *

Redirect examination (continued) by Mr. PURDOM:

Q. Mrs. Kanun, do you wish to clarify one point in your testimony this morning?—A. Yes.

Q. Go ahead and do so.—A. During the cross-examination by Mr. Williams, he asked me whether I was familiar with a letter to the Company requesting a 65-cent minimum, and I said that I was not familiar with any such letter. Then he referred to a letter dated January 21. I am familiar and have knowledge of a letter written to the Company under date of January 21, 1946, enclosing wage proposal by the Union, dated January 19, 1946, which was just submitted in evidence by the Board as Board's Exhibit——

* * *

A. (Continuing.) 16. The letter of January 21, 1946, merely repeats the previous wage demands made by the Union, that is, for a 60-cent per hour minimum and a 5-cent increase across the board for all workers in the mill. The wage proposal attached to that letter is a break-down of that general request.

[98] By Mr. PURDOM:

Q. What is this [handing document to witness]?—A. This is a wage proposal made by the Union under date of December 19, 1945. It repeats the demands by the Union of a 60-cent minimum and 5-cent per hour increase after the base rate for the 60-unit hour has been balanced and adjusted to meet the peg point rates enunciated by the Southern Textile Commission; in other words, a repetition of the demands of the Union made during the negotiations in November and December.

Q. Was that presented to the Company on December 19, 1945?—A. Yes.

* * *

[99] (The document heretofore marked "Board's Exhibit No. 15" for identification was received in evidence.)

* * *

(The document heretofore marked "Board's Exhibit No. 16" for identification was received in evidence.)

Trial Examiner ROGNSIN. You may proceed.

(Witness excused.)

Mr. PURDOM. I ask Mr. Kenneth Douty to take the stand.

KENNETH DOUTY (Board witness).

* * *

[100] DIRECT EXAMINATION

* * *

Q. What is your job?—A. I am Georgia State Director of The Textile Workers Union of America, CIO.

Q. And in such capacity have you had any dealings with the Crompton-Highland Mills, Griffin, Georgia?—A. I was in charge of the negotiations which have taken place between the Company and the Union.

Q. When did the negotiations begin?—A. They began on August 31, 1945.

Q. Did the Company know you were in charge of them?—A. I assume so.

Q. How did they know that?—A. I submitted to the Company five copies of our wage proposal of August 13.

Mr. WILLIAMS. We stipulate we knew Mr. Douty was in charge of negotiations.

Mr. PURDOM. All right.

By Mr. PURDOM:

Q. Then thereafter did you have meetings with the Company?—A. Yes.

[101] Q. What were the dates of those meetings?—A. The dates of those meetings were August 31, September 12, 13, and 14, September 26, 27, and 28, October 17, 18, and 19, November 7 and 8, and December 19.

Q. What was the purpose of those meetings?—A. The purpose of those meetings was to attempt to negotiate a collective bargaining agreement.

* * *

[103] Q. Let me show you Board's Exhibit 15 in evidence [document handed to witness]. Was that ever presented to the Company?—A. That is the proposal that was presented to the Company on December 19. I remember distinctly because it represented a recapitulation of our proposal of November 8 and put down in one place what amounted to about our total position on the wage question.

Q. Now, on December 19, that was the last meeting with the Company?—[104] A. Yes, sir.

Q. At that time had a contract been negotiated between the Company and the Union?—A. No, sir.

Q. What issues were then still in the state of negotiation on which an agreement had not been reached?

Mr. WILLIAMS. What date is that?

Mr. PURDOM. December 19.

A. The issues on which no agreement had been reached were the question of wages which included the question of shift differential, insurance provisions, severance pay and vacations, the union security issue, one section of the arbitration clause that related to the selection of third and neutral party, the work assignment clause, the safety and health provision. Then there were a few other sections to the agreement such as the preamble which were awaiting settlement, depending upon the settlement of those issues.

Q. That was under the designation of the bargaining unit?—A. Yes; the definition of the bargaining unit, I believe.

Q. And had you reached a complete agreement on vacations?—A. No; we had not.

Q. What in that was still in disagreement?—A. On the vacation clause I believe it was the question of qualifications for vacations that was still in dispute. We felt the section excluded about every one—or had the possibility of excluding many people who deserved a vacation, [105] and we hadn't agreed to that provision.

Q. And did you mention whether or not an agreement had been reached on union security and check-off?—A. It had not.

Q. It had not. How about a section on what I might describe as union activity or something of that nature? Tell us about that and whether an agreement had been reached.—A. According to my record, a section which is entitled, "Solicitation," and which has to do with union activity on Company time had not yet been agreed to.

Q. Now, at the end of the meeting on December 19, had agreements been reached on those items that you designated?—A. No, sir.

Q. On or about January 2 or 3, did you receive a letter from anyone from the Crompton-Highland Mills?

* * *

A. (Continuing.) January 2 I received a letter signed by Mr. Pickford for the Company which informed me that the Company was making a wage adjustment, and including a copy of the adjustment.

Q. See if that is the same as Board's Exhibit 12–A and then check the corresponding pages sufficiently to determine whether they are copies?—[106] A. Yes; these appear to be the same. I am sure they are.

Q. When was the first time that you knew of any such material as is contained on Board's Exhibits 12–A through F?—A. When I received it in the mail on January 2, 1946.

Q. Had any such agreement been reached as a result of bargaining or negotiations between the Company and the Union?—A. No, sir.

Q. Had the Company, prior to January 1, 1946, offered to the Union any such scale of wages?—A. No, sir.

Q. As reflected in Board's Exhibit 12-B through F?—A. No, sir.

Q. Had the union at any time refused such increases and rates of pay?—A. No.

Q. Prior to January 1, 1946, what counterproposal, if any, had the Company made in wages?—A. The Company's position on wages from October 18 through the meetings in November was that they would make no wage proposal that would embody an increase. They repeatedly stated that it was not a question of their ability to pay; that that was not the point at issue; but that they felt that they were paying as high rates, if not the highest of any in the community and until there was a general movement for [107] an increase, the Company had no intention of putting one in. Therefore they refused to make a counter proposal for a wage increase, either on the 18th of October, which was the date when we really got into a discussion of the issue, or on the 7th or 8th of November, and when we met first on the 7th at the Conciliation Office and then later the next day in Griffin. However, on the 19th of December, they made their first wage proposal, their first and only wage proposal.

At that time they proposed to incorporate the 10 cents across-the-board increase that had been previously granted and paid under War Labor Board rulings into the base rates which would have given increases that ranged from, I suppose less than a cent to two cents; it ranged something of that sort.

They also at that time made a proposal on a third shift differential which was based on the number of points an employee averaged in an hour. For instance, if he averaged 65 to 67c, he got a cent as a third shift differential.

Q. Did the Union accept or reject that proposal?—A. The Union indicated to the Company that they felt that the proposal was inadequate.

Q. Was the proposal made at that time the same as, or in excess of, or materially less than the rates put into effect as shown by Board's Exhibit 12-B through 12-F?—A. It was materially less, of course, than the proposal. [108] This proposal.

Q. Not proposal. I am referring to Board's Exhibit 12-B through 12-F.—A. The scale the Company put into effect on January 1—or December 31—The Company's proposal to the

Union on December 19, 1945, was considerably less than the rates established by the Company without consultation with the Union on the 31st of the same month.

Q. Tell us how these meetings that you had with the Company were arranged, the ones you have designated by date?—A. I think the first one was arranged through telephonic between Mr. Williams and myself. The others were tentatively arranged through—by carrying over from one series of meetings to another and deciding at the termination of one group of meetings when the next would be held. Those meetings were subject to change and often were changed, and again it was through Mr. Williams and myself that arrangements were made.

Q. That is through December 19?—A. Yes. Meetings at Conciliation Office were arranged—Mr. Lacey of the Conciliation did most of the arranging, though Mr. Williams and I did some of the arranging ourselves.

Q. Did you ever have any meetings arranged on the notice of an hour or thirty minutes or anything of that nature?—A. No, sir.

Q. Generally what notice preceded the meetings?—[109] A. It was usually a couple of weeks.

Q. Who attended those meetings for the Company?—A. Those meetings for the Company were attended by Mr. Pickford, the plant manager; Mr. Ethridge, the personnel director; Mr. Williams, the attorney; Mr. Charles Merryman, the vice president; and Mr. Nightingale Richmond, president.

Q. Now, for the Union?—A. For the Union the meetings were attended by the local union committee of about seven or eight people and by myself, and then most of the meetings were also attended by Mrs. Clara Kanun, and one was attended by Mr. Frank Barker, National Representative on our staff.

Q. Did those meetings last ten, fifteen, or twenty minutes, or a long period of time?—A. The meetings usually lasted all day with an adjournment for lunch, beginning at 9 o'clock, 10, or 10:30.

Trial Examiner ROGOSIN. The meeting, not the lunch.

The WITNESS. The meeting; unfortunately, not the lunch.

A. (Continuing.) And lasted until late afternoon.

Q. When you requested, that is, the Union, this information from Mr. Williams and the Company, did you specify why you wanted this information you didn't get?—A. Yes; I think that was made perfectly clear, especially by Mrs. Kanun, who did most of the discussion of that section [110] of our proposal.

Q. From the Company's response to questions about the 60-unit hour base rate, did they say they did or did not have such

a base rate?—A. They said that such a base rate—such a concept, as a matter of fact—had no part in the figuring under the incentive plan they had in effect.

* * *

By Mr. PURDOM:

Q. During the negotiations, was the Union's method of how contracts had to be negotiated, and you had to approve them, and so forth, ever explained to the Company?—A. Well, I think it was made perfectly clear that any contract, as Mr. Williams has earlier said, that any agreements that were reached, or contract, were tentative as far as the committee was concerned, based upon the approval of the complete agreement, and that when the whole contract was tentative subject to approval by the local body; and that in the negotiating picture I represented the National Office and represented the approval of the contract by the National Office of the Union.

Q. State whether or not he knew whether a contract could be entered and negotiated without the approval of the National Office.—A. I am afraid I can't answer for Mr. Williams; no, sir.

[111] Q. From any statements that you might have made during the negotiations.—A. Well, I would assume that Mr. Williams is somewhat experienced in this work and would know well enough that to meet the needs a contract must have two approvals: One, must have the approval of the local body of people to whom it applies and must meet certain general standards that are set down by the National Office as contract provisions.

* * *

CROSS-EXAMINATION

Trial Examiner ROGOSIN. May I interrupt just a moment; who would normally sign the consummated agreement?

The WITNESS. The consummated agreement would be signed for the Union by one of us from the National Office staff and by the Local Committee.

By Mr. WILLIAMS:

Q. Our counterproposal was prepared in that manner, prepared for that kind of signature. Our counterproposal to you was prepared by a signature of an authorized member of the National Union and a member of the committee of the local union?—A. Do you want me to check that so I can say "yes"?

Q. Yes.—A. I will be glad to [checks]. Yes; the proposal was so; you did it so. We can assume Mr. Williams knew that.

[112] Q. Mr. Douty, I would like to clear up a couple of what

I think were unintentional misstatements in your testimony. You said we had a bargain conference on October 19. Check back and see if you are not mistaken.—A. When I said that and looked at your face, I wondered whether my note on that was clear. We had one on 17th and 18th.

Q. That's right.—A. I am not clear from my notes whether the 19th was one also. I am willing to be subject to that correction, unless I find in checking further that we did have such a meeting.

Q. You mentioned as issues in dispute in December an issue as to safety and health. I would like you to look back through your notes and see if you don't find on November 7, 1945, in the Office of the Conciliation Service in Atlanta, Georgia, that we agreed to Section 4 of Article 8 with respect to safety and health.—A. My notes indicate that the Company was to submit, as they did, another proposal on that, which I have; but it was never agreed upon.

* * *

[113] Q. Mr. Douty, you realized at all times that the Company's counterproposals with respect to wages included provisions for reopening the wage issues after the contract was closed, didn't you?—A. The Company's proposal differed from in that it provided for reopening of wages but no method of settling the matter in the event that the Company and the Union could not reach agreement. We had proposed first arbitration and had indicated that we would accept the abrogation of certain sections of the agreement.

[114] Q. As we stood in bargaining, we simply had to settle those issues between ourselves by bargaining or not at all, didn't we?—A. The Company had agreed to the reopening of wages, that is perfectly true. It had not gone along on formulations and counter proposals that we had put forth and methods of dissolving disputes after such wages were reopened.

Q. We had agreed to the provisions whereby the contract might be completely agreed upon and executed without foreclosing the wage issue, leaving it so you could bring the wage issue up?—A. It is customary in all contracts to have a reopening provision for wages.

Q. I asked you: We had offered to do that, hadn't we?—A. Yes.

Q. We had also told you all through the bargaining that Crompton-Highland Mills had always been among the first of the mills in this area, locality and industry to increase wages when wage increases occurred, and had assured you we would always be among the first to increase wages when wage

increases were occurring in this area and locality.—A. I remember your making that offer many times.

Q. Many, many times. So that it was no surprise to you when occasion for a wage increase occurred in this locality that we would be among the first to make it.—[115] A. If you mean it was not a surprise to us that with the Union as the collective bargaining agency, you put in a wage increase without collective bargaining, that it was not a surprise to us, the answer is "no" to your question.

Mr. WILLIAMS. Identify, please as——

Trial Examiner ROGOSIN. You mean by that——

The WITNESS. We were surprised.

* * * * *

[116] (The document heretofore marked "Respondent's Exhibit No. 5" for identification was received in evidence.)

* * *

Redirect examination by Mr. PURDOM:

Q. Mr. Douty, did you under the Smith-Connally Act notify the Company, and the law of the State of Georgia, of certain issues pertaining to the notice to strike?—A. Yes, sir.

Q. What were those issues that resulted in that action that you told the Company about?—A. I have a letter of October 22, 1945, written by us to Honorable Lewis Schwellenbach, Secretary, U. S. Department of Labor in Washington, with copies for Paul Herzog of the National Labor Relations Board; George W. Taylor, of the National War Labor Board; Paul Styles, chairman of the [117] Regional National Labor Relations Board; Emil Rieve, general president of the Textile Workers Union of America; M. T. Van Hecke, chairman of the Regional War Labor Board; Ben T. Huiet, commissioner of labor for the State of Georgia; R. R. Lawrence, Southern Director of Textile Workers Union of America; and Mr. Ralph Williams, attorney for the Crompton-Highland Mills.

In that we request—we announce to the Secretary of Labor that a dispute exists at the above plant, and the last paragraph is as follows:

"The dispute arises from the failure of the Company to agree to adequate provisions in a signed contract with the Union on the following issues:

"(1) Wages, shift differential, insurance provisions, severence pay, and vacations.

"(2) Union security.

"(3) Arbitration.

"(4) Work assignments of employees.

"(5) Safety and health of employees."

Those were the issues upon which the strike vote was based.
Trial Examiner ROGOSIN. What was that date?
The WITNESS. October 22, 1945.

* * *

[118] By Trial Examiner ROGOSIN:

Q. Mr. Douty, was December 19 the date of your last bargaining conference with the Company in this case?—A. Yes, sir.

Q. At the termination of the conference on that date, will you state whether you considered that an impasse had been reached with respect to wages, or did you still consider the matter open for negotiation?—A. Well, I think we considered that all matters were still open for negotiation, although we had reached on the issues listed, certainly, an impasse at least temporarily, and I think that is indicated by the fact that on the 22nd of January we wrote requesting conference with the Company on wages, to which we received a letter suggesting a conference for total contract negotiations, to which we replied that we were willing to meet at any time, but from which we haven't heard definitely from the Company any possible date.

Q. Well, did anyone in behalf of the Company during the last conference that you had with them indicate that the Company had definitely rejected your proposals?—A. I think the Company made it quite clear—you mean wage proposals?

Q. Wage proposals?—[119] A. (Continuing.) That they rejected our wage proposals. They had made most clear up to that meeting that any general wage increase was out of the picture. Then in that meeting they made this offer amounting to a half a cent to two cents, but they rejected our proposal most emphatically.

Q. Well, what was the position of the parties at the conclusion of that conference on December 19? Was it contemplated that the parties should meet again with respect to wage proposals?—A. Not particularly. I mean, we broke up not having reached agreement on these points, and our situation at the end of the meeting was one of stalemate on these particular points in dispute.

* * *

Cross-examination (continued) by Mr. WILLIAMS:

Q. Mr. Douty, I believe you said this on direct examination: The conference on November 7, which was held in the office of the Conciliation Service in Atlanta, the idea of that conference didn't originate with either you or me; that was originated with the Conciliator, wasn't it?—A. The Conciliator in his normal

performance of function under the Smith-Connally Act originated that conference.

Q. You had given notice of your intention to strike and [120] he called that conference in an effort to avoid the strike.—A. That's right.

Q. And that was also true of November 8 conference?—A. Yes; we decided to meet the next day. I suppose it would be us arranging, you would officially call it.

Q. December 19 conference was arranged at the request of the members of the local union bargaining committee?—A. No; it was arranged at the request of the total committee: Myself and Mrs. Kanun and members of the bargaining committee and the total negotiation committee.

Trial Examiner ROGOSIN. Was any strike vote actually taken?

The WITNESS. A strike vote was taken on November 22.

Mr. WILLIAMS. 27.

Trial Examiner ROGOSIN. As I recall it, Mrs. Kanun testified——

The WITNESS. She testified—she transposed a few dates, but the strike vote was taken on November 27. 369 "yes" votes and 120 "no" votes.

* * *

[121] Redirect examination by Mr. PURDOM:

Q. Mr. Douty, will you state what the disagreement was on the preamble?—A. The disagreement on the preamble stemmed from the fact that in the Company's counterproposal they had made this contract as between the Company and the employees in the hereinafter described bargaining unit, whereas our preamble had made the contract between the Company and the Union. We were therefore not in agreement on that section.

Q. Now, in the "R" Case hearing, who was certified as the bargaining agent for the employees in the unit therein specified?—A. The Textile Workers Union of America, CIO.

Mr. PURDOM: I ask in that connection that Your Honor take judicial notice of the certification of representatives in Case No. 10-R-1465. That is all.

Re-cross-examination by Mr. WILLIAMS:

Q. And the disagreement was that we wanted to make the contract with the employees in the certified bargaining unit recognizing you as the agent of the employees in making the contract and you wanted the contract made between the Company and the Union as a principal rather than [122] treating the Union as an agent?—A. Yes. We felt that the [concept]

of separating the employees and the Union was a false one. The employees and Union were synonymous and therefore should not be separated.

Examination by Trial Examiner ROGOSIN:

Q. To make this clear—If in your original direct testimony, you spoke of the bargaining unit being a matter of disagreement, that was not correct?—A. That was not correct.

Q. That was not what you intended to convey?—A. It is not what I meant.

Q. What you intended to convey was what you gave in this testimony?—A. Yes.

Mr. PURDOM. Do you know approximately how many employees are in the bargaining unit at Crompton-Highland Mills?

The WITNESS. At the time of the strike vote there was something better than 500 participating. Approximately 600 would be a close estimate, 630.

* * *

(Witness excused.)

Mr. PURDOM. Call Mr. Hozy D. Corley.

HOZY D. CORLEY (Board witness).

[123] DIRECT EXAMINATION

* * *

By Mr. PURDOM:

Q. Where do you work?—A. Highland Mills.

Q. Is that Crompton-Highland Mills?—A. Yes, sir; Crompton-Highland Mills.

Q. The Respondent in this case?

* * *

A. Yes, sir.

Q. What is your job there?—A. Loom fixer.

Q. Were you also on a committee for the Union?—A. Yes, sir.

Q. What committee?—[124] A. Negotiating committee.

Q. Were you on another committee that had nothing to do with the Union?—A. Yes, sir; I guess you might say.

Q. What committee was that?—A. The Community Chest Fund.

Q. In connection with the Community Chest Fund, on or about October 17 and 18, did you contact the management of the mill? 1945.—A. I forget just the date.

Q. On or about October 19, tell us what happened on that

date, or when you contacted Mr. Etheridge about the Community Fund Drive.—A. I was to meet Mr. Pickford over there about 9 o'clock for several mornings.

Q. Now, which Pickford is that?—A. Mr. H. A. Pickford, Jr.

Q. What is his job?—A. General manager. General manager of the Highland Mills.

Q. Yes.—A. And he was to give me an outline of how to work with all the overseers, second hands and office girls in the Community Chest Fund. And the 19th, I think it was, I went over and went through and collected all the money up and brought it out and me and Mr. Ethridge was counting it.

[125] Q. Which Mr. Ethridge is that?—A. Frank Ethridge, personnel manager.

Q. What job with the mill?—A. Personnel manager.

Q. Is that one of the bosses?—A. No, sir; I wouldn't call him a boss.

Q. What was his job?—A. Hiring and firing people, and looking after everything.

Q. Does the hiring?—A. Yes.

Q. All right, sir; go ahead.

Trial Examiner ROGOSIN. Does he do the firing too?

The WITNESS. He kind of helps out on it sometime.

By Mr. PURDOM:

Q. Go ahead.—A. While we was counting the money, Mr. Pickford called and asked was I in there and Mr. Ethridge told him I was. And we was counting up the money. He said he would be in in a few minutes, and he came in in a few minutes and in a few minutes Mr. Stewart, the boss weaver, came to the door and called him and he went out for a minute and said he would be back in a few minutes. And so me and Mr. Ethridge was sitting there and we counted up the Community money and we was waiting for Mr. Pickford to come back. We didn't know why he didn't come back, but he was late. And Frank said something about the meeting that just broke up there, the [126] negotiating meeting.

Trial Examiner ROGOSIN. By "Frank," whom do you mean?

The WITNESS. Mr. Ethridge.

Q. About what meeting?—A. Negotiating committee.

Q. What did he have to say about the negotiating committee?—A. He asked me what did I think about it and the way it come out. And I told him, well, it looked bad to me the way it had—for it to turn out like that.

He said, well, they all walked out after we all left.

Q. Who was he talking about?—A. He and Mr. Williams, Mr. Pickford, Mr. Merryman, and Mr. Richmond. And he said they all come to the conclusion that Mr. Douty had quit arguing for the help and gone to arguing for the Union itself.

Q. Did he say anything else in that connection?—A. No, sir; not right then. I told him, I said, "Mr. Ethridge, you are wrong there." I said, "He has had the Union people right on just the same."

And he said, "Well, the Union hired him hard and he had to do so much business to get so much money, or had to get some kind of a raise through the mill to get it."

And I said, "Why that is all a mistake." I said, "You know that all yourself. Mr Douty's wages wouldn't be raised if he was to organize every mill in Griffin."

* * *

[127] Q. Did he say anything about Union security or 5 cents an hour, do you recall?—A. He just said he didn't think the Company was going to give us anything on that line. He didn't believe they was.

Q. Now, did you attend all of the wage negotiating meetings on up and through the one held on December 19, 1945?—A. Yes, sir; I was at every one of them.

Q. Were you the chairman of the local committee?—A. Yes, sir.

Q. In these meetings whom were Mr. Douty and Mrs. Kamm and yourself, and so forth, representing? For whom were you trying to negotiate and bargain?—A. With the Company.

Q. For whom?—A. For the Union.

Q. I will ask you if on or about January 1 somebody came to your house?—A. Yes, sir.

Q. Who was that?—A. Mr. Ethridge; Mr. Frank Ethridge.

[128] Q. About what time was that?—A. I think it was about five minutes after three.

Q. And what did he ask you?—A. He asked me could I get the committee together and meet over at the office about 20 minutes till four.

Q. Did he tell you why to meet over there?—A. He said, "You are going to get a raise."

Q. Well, had you, prior to that time, heard anything about a raise?—A. No, sir; hadn't heard a word. It was a surprise to me.

Q. What did you do then?—A. I told Mr. Ethridge I would do the best I could to get them because all I had to do was meet them at the gate and get them to come on out there and I would try to get there by 5 or 10 minutes till four.

Q. Were you able to see all of the members of the committee?—A. No; I was not able to see them all. I seen three or four, and Mr. Ethridge, I think, notified two or three that was in the mill working. We got them all but one and we got there just about four o'clock—I mean, when the meeting started, just about four.

Q. Well, where did you have this meeting?—A. In Mr. Pickford's office.

Q. Who was there for the Company?—A. Him and Mr. Ethridge.

[129] Q. And what happened when you got in there?—A. Well, we went in and Mr. Pickford read the notice that he sent Mr. Douty concerning the wages, and he said, "We are giving you a raise." And he said—well, he went on to explain it; it would average from four to six cents on the hour.

Q. Did he say when that raise would begin? Did he announce to you——A. He said it was a raise as of yesterday morning. That was Monday. That was Tuesday when we was talking.

Q. That would have been the day before January 1: December 31; would it not?—A. I reckon it must have been. It was on a Monday before the day we was talking. The raise would take effect as of yesterday morning; that was Monday. Payroll started the week.

Q. I will ask you to look at Board's Exhibit 12–A through 12–F and see if that is what he handed you and see if you can identify that.—A. (Examining documents.) Paragraph 12 here—12—E is that? That is but these other——

Q. Board's Exhibit 12–F.

Did he give you a copy of that letter, of Board's Exhibit 12–A that he said he sent to Mr. Douty?—A. Yes, sir.

[130] Q. Did he mention anything about posting those notices?—A. Yes, sir; he pointed at some——

Q. What did Mr. Pickford say in connection with those notices that you have?—A. He said, "They are being posted now."

Q. Where were they being posted?—A. In the mill, on the bulletin boards inside the mill.

Q. Well, after he announced that wage increase, what did he do?—A. Well, we didn't practically do nothing, only just discuss the wage there a little bit, just ordinary, and then we thanked him for the raise and went on out. That is all there was to it.

Q. Well, when you got back outside, did you notice anything in particular?—A. Well, there was two, I think, told me before I got in the weave room that we was getting a raise.

Q. Two what?—A. Two of the weave room hands. I forget now just which ones it was. There was a bunch of them always around the door, you know, going in around work time. But if I am not mistaken, Mr. Goddard told me there was a raise before I got in the weave room.

Q. When you got back to your place of work, had notices been posted?—[131] A. Yes, sir.

Q. Board's Exhibit 12?—A. Yes, sir.

Q. Had been posted on the bulletin board?—A. Yes, sir.

Q. When you returned from the conference?—A. Yes, sir.

Q. And that was about 15 after 4. Now, were you asked to approve that raise for the local union, or was a committee asked to approve it?—A. It was never asked nothing about it. Just told us they was giving us a raise. That was all.

Q. Now, while you were in that office, did Mr. Pickford or Mr. Ethridge take up or discuss with you any issues pertaining to the articles and section of the contract——A. No, sir.

Q. (Continuing.) That had still not been agreed on?—A. No, sir; never mention no contract.

Q. Did he discuss anything about reopening of wages?—A. No, sir.

Q. Did he mention anything about union security?—A. No, sir.

Q. Work assignment?—A. No, sir.

Q. Did he mention the selection of a neutral party for [132] arbitration?—A. No, sir.

Q. Did he mention anything about safety and health?—A. No, sir.

Q. Did he mention anything about union activity?—A. No, sir.

Q. Did he mention anything about vacations?—A. No, sir.

Q. Just called you in there and made an announcement of that?—A. Just made an announcement that he was giving us a raise.

* * *

By Mr. PURDOM:

Q. Could your committee agree to a wage increase by itself?—A. I don't think so.

Q. What would have to be done before it would be put into effect with the Union's agreement?—A. I am new on that. Now, I don't know for sure.

Q. What is your understanding?—A. I don't know for sure whether—I don't think that we would have had the authority to accept it or reject it either one without we would have got and notified and all the committee got there—one of them was

absent. And then I [133] don't know whether we would have had Mr. Douty or Miss Clara there; I don't know for sure.

Q. Do you know whether or not you would have to submit the contract for the membership, for them to submit a vote on it before it goes into effect?—A. Yes, sir; supposed to.

Q. Supposed to do that. Now on January 1, was either Mr. Douty or Mrs. Kamm in the office there when this announcement was made?—A. No, sir.

Q. One member of the local committee was absent; is that right?—A. That's right.

* * *

[139] MARCUS LEE CRAWLEY (Board witness).

* * *

Direct examination by PURDOM:

Q. Mr. Crawley, what is your full name?—A. Marcus Lee Crawley.

Q. Where do you work?—A. Crompton-Highland Mills.

Q. Griffin, Georgia?—A. Griffin, Georgia.

Q. What happened on January 1, 1946, shortly before four o'clock?—A. Well, I started in the mill out there and somebody, I don't remember who it was, told me that Hozy had left word for me to come out to the big office, out to Mr. Pickford's office, H. A. Pickford, that they was having a meeting out there, and I just sent my lunch in the mill. When I got out there I reckon the discussion or whatever it was was just about over. I didn't get out there until late. All the rest of them had done been out there.

Q. Did Mr. Pickford, the manager of the mill, say anything to you?—A. He said, "We have been discussing a raise and we are [140] posting notice in the mill"—"being posted"; that is the words he said.

Q. Did he tell you what the raise was?—A. Well, he said—I think he said it would run from two to six cents, if I am not mistaken.

Q. What happened after that?—A. Well, after we got through talking about that, he told us about the notice being posted. We got up and said, "Thank you," and went on out. I don't think I was out there over five minutes.

Q. That was the length of time you were in the office?—A. Yes; five or ten minutes.

Q. About what time was it when you left the office?—A. I would say it was pretty close to four o'clock.

Q. Now, what happened when you came out of the office?—A. Well, we just came on and went on down—well, the office is, you know, a little distance from the mill. It is not right at

the mill. Just as we went in the mill, I met—I don't know who it was; I couldn't call his name. He said, "We got a raise today." I said, "Well, I reckon that is what we was at the office about." He said, "Yes, the notice is done posted."

Q. That was an employee of the mill?—A. Yes, sir. But I don't remember his name.

[141] Q. Now, shortly thereafter, did any sweeper or scrubber see you about this business?—A. Yes, sir. After we drawed our check the sweeper did. He wanted to know—he was talking about the raise and all—he wanted to know how come they didn't get a raise, and he said his flour cost him just as much a sack as mine did.

Q. When you got back to where you worked, was there a notice on the bulletin board?—A. Yes, sir.

Q. I will show you Board's Exhibit 12-A through 12-E. What room do you work in?—A. Weave shop No. 2 Weave shop.

Q. Is that the notice that was posted up there, [showing document to witness]?—A. Yes, sir; that is it.

Q. That is Board's Exhibit 12-E. That is the notice that was posted; is that right?—A. Yes, sir; that's it.

Q. Now, when you went to the office, did Mr. Pickford or Mr. Ethridge or anyone go over all of these rates and what they meant, and so forth, with you?—A. They just showed us the notice and read the notice and said that was what was being posted.

Q. Just announced it to you?—A. Yes, sir.

* * *

By Trial Examiner Rogosin:

Q. Did you say he read the notice?—A. He just read that up there at the top.

Q. Just that top writing?—A. Yes; and announced it.

Q. Mr. Crawley, were you a member of the negotiating committee?—A. Yes, sir.

* * *

By Mr. Purdom:

Q. Let's see if I understand the part that he read. Read all he read.

* * * * *

The Witness. Whenever I walked in, he done been talking and he said, "In accordance with our past policy of being among the first to make wage adjustment when wage changes [142] are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31, 1945. A list of the various adjust-

ments applying to the jobs in your department is shown below:"

By Mr. PURDOM:

Q. That is what he read?—A. Yes.

* * *

[148] W. J. GODDARD (Board witness).

* * *

DIRECT EXAMINATION

* * *

Q. Where do you work?—A. Highland Mill.

Q. Is that the Crompton-Highland Mills?—A. Yes, sir.

Q. Tell us what you saw as you were going to work on January 1, 1946?—A. I saw Mr. Moore and Mr. Corley going to the mill office.

* * *

By Mr. PURDOM:

Q. What time was that?—A. About ten or fifteen minutes to four.

Q. That was the mill office?—A. Yes, sir.

Q. What committee were Mr. Moore and Mr. Golden on?—A. Negotiating committee.

[149] Q. For whom? Whose negotiating committee?—A. They are on the negotiating committee, at the office on the Union.

Q. Where were you going when you saw them going to the mill office?—A. Going to work.

Q. What did you do then, after you saw them?—A. Well, I went on in as usual and hung up my hat and coat, and I saw some of the first shift workers going to the bulletin board and reading something, and I went over and looked, and I saw a notice on there where we was getting a raise.

Q. You read that?—A. Yes, sir.

Q. What part of the mill do you work in?—A. Weave room No. 2.

Q. I show you Board's Exhibit 12-E, "Notice, Weave Room," dated January 1, 1946.

Look at that and see if that is what you saw, posted on the bulletin board—or a copy of that.—A. Yes, sir.

Q. After you read that notice, Board's Exhibit 12-E, what did you do?—A. Well, I went on to mark up my cloth and went to work and there was a light flashed.

[150] Q. Did anybody come in there a little bit later, after you had gone to work?—A. Yes, sir; I met Mr. Corley. I was going to the supply room. I met him coming in. I told him, "I see where we got a raise."

He said, "Yes; we just been out to the office and they told us about it."

Q. Now, how long had it been since you saw that notice until he came back in the room?—A. I couldn't say exactly. I imagine it was fifteen or twenty minutes past four.

* * *

Mr. WILLIAMS. Mr. Purdom, what you have been trying to establish is that the notices of the increase were posted on the bulletin board at or about the same time that the Company was announcing the increases to the members of the local union committee? We stipulate that. I don't know what you are trying to get at. We will stipulate that.

Mr. PURDOM. In other words, they were posted at the time the committee was in the office.

Mr. WILLIAMS. They were posted while they were in the [151] office.

Mr. PURDOM. Someone was posting them.

Mr. WILLIAMS. After the committee came in the office and it was being discussed with the committee, the notice was posted on the bulletin board.

Mr. PURDOM. I am trying to fix the time as approximately the time the committee went in there; someone went out through the mill posting it.

Mr. WILLIAMS. I can't do that exactly.

Mr. PURDOM. But I think we are virtually in agreement. Maybe there are one or two minutes difference.

* * * *

[152] RALPH WILLIAMS (Respondent's witness).

* * *

DIRECT EXAMINATION

The WITNESS. My name is Ralph Williams. I am attorney at law for Crompton-Highland Mills, Inc., in this matter.

I was the Company's spokesman in the bargaining negotiations between Crompton-Highland Mills and the Textile Workers Union of America, and it is therefore necessary that I occupy the rather undesirable position of both witness and attorney at law in the case.

* * *

[153] The organization of the Union at Crompton-Highland Mills was generally attributed, both by the employees and the union representatives, to employee dissatisfactio

* * *

[154] I will repeat to the Examiner the explanation of the point plan which I made to the employees in the course of bargaining:

Trial Examiner ROGOSIN. You say, Mr. Williams, "which you made to the employees"; your mean employees on the committee?

The WITNESS. To the employees on the bargaining committee and to Mr. Douty and Mrs. Kamm.

This explanation was not made once, but was made any number of times; I should say, dozens of times, to the point where everybody got tired of hearing it. I can't say that it was ever made in complete sequence at any one time, because as bargaining conferences go, you start to say something and somebody has some other thought and they inject it [155] and you rarely ever get through with the complete dissertation on any one subject at any one time. But throughout the bargaining conferences, wherever the point plan came into discussion, my effort was to demonstrate to the employees' committee and to the union representatives that the point plan as it is applied at Crompton-Highland Mill is essentially and in reality a straight-piece work rate of pay plan in that there is a fixed non-fluctuating rate of pay for each occupation, that rate of pay being a rate of pay per point or unit of production. That fixed rate of pay per point or per unit of production is applied and paid for all points or units of production produced by the employee to whom that rate is applicable, there being a different rate for each occupation; but the rate for each occupation is applied whether the employee produces 60, 65, 70, 75, 80, 85, or any other number of points or units of production per hour.

The distinguishing characteristic of the plan is that the same rate per point or unit of production produced is paid irrespective of the speed at which the employee works, or irrespective of the rate of production which the employee produces, except that each employee is guaranteed a minimum hourly rate to be applied on a daily basis. So that if the employee's point plan or incentive wage earnings fall below the guaranteed minimum hourly rate applied on a daily basis, the employee receives a guaranteed minimum rate rather than the incentive earnings.

[156] The thing which I constantly tried to get the Union to realize was that the rate per point or rate per unit of production was in all of the circumstances of our bargaining the subject for collective bargaining inasmuch as it is the rate of pay.

Now, not anything like all of the employees at Crompton-Highland Mills are under the point plan. It is rather the essence of the point plan, as we explained to the Union in bar-

gaining, that it be installed gradually and on a basis of sound engineering studies, which cannot possibly be made at any one time. Therefore there are a considerable number of employees in the mill who are not yet under the incentive plan. Some of those employees will eventually be under the incentive plan and will be afforded the opportunity for higher earnings which the plan affords.

There are some occupations which we will not ever be able to put under the incentive plan, and those occupations get, and will always presume to get, a straight hourly rate of pay.

The two methods of pay in Crompton-Highland Mills are the straight hourly rates of pay of the hourly rated employees and the rates per point or unit of production of the incentive rated employees.

Now, what constitutes a point or a unit of production? A point is simply a measure or unit of production. What [157] constitutes a point is determined and established on the basis of engineering studies of the actual operation of the job. I have no capacity to describe the engineering studies of the actual operation of the job.

At this point it will facilitate the explanation and keep pace with the course of bargaining if we refer back to bargaining which antedated October 17 and 18. In our initial proposal to the Union, which was identified as Respondent's Exhibit 3, the August 31 proposal—and that same proposal on our part was carried forward into the memorandum of the provisions agreed upon and proposals with respect to provisions not agreed upon, identified as Respondent's Exhibit 4—and I will make my references to Respondent's Exhibit 4, the provisions in that exhibit in this regard being identical with the provisions in Exhibit 3. At pages 3 to 5 of that exhibit are set forth the proposals which the Company made to the Union initially and at all times up until October 18, 1945, with respect to wage rates and work assignments; and the term "work assignments" includes the establishment and adjustment of point plan standards and work assignments.

We recognized that what constitutes a correct point standard or point value, unit of production under the point plan, must be established by engineering studies of the actual operation of the job, and we recognized that there can well be differences of opinion between engineers as to [158] what would constitute a proper point standard or unit of production; also as to what would constitute a proper work assignment to give effect to the point standards or unit of production. We propose, therefore, that it is expressly agreed that any point standard or work assignment heretofore or hereafter established by the Company

may, upon request, be studied and checked by competent engineers designated and employed by the employees through the Union as their collective bargaining representative.

In the remainder of that original proposal we carried forward the idea that the engineers designated by the Union to act on behalf of the employees, and the engineers designated by this Company should endeavor in good faith to compose any differences of opinion and reach agreement. If they should be unable to do so between themselves, they should call in the Conciliation Service of the United States Department of Labor and ask it to designate a technician to assist them in composing their differences.

* * *

[159] The WITNESS. In that original proposal, it was contemplated if the Company engineers and Union engineers, with the aid of the technician from the Conciliation Service, were [160] still unable to agree, that would simply be a matter which the parties had been unable to settle through collective bargaining negotiations.

It was my contention originally, as stated in the proposal, that matters pertaining to point standards and work assignments were so inherently related to wages, they were exclusive subjects for collective bargaining and should not be submitted to arbitration. The principal objection voiced by the Union to that proposal in all of the discussions prior to October 17—and there were a good many of those discussions—the principal objection voiced by the Union was that those disagreements should be subject to arbitration and should not be left for collective bargaining settlement alone.

But in all discussions of the point plan, we emphasized, and endeavored to emphasize to the committee, that we could not feasibly, in the course of bargaining for a general contract, attempt to do the bargaining necessary to reach a determination as to whether the point values, the point standards and work assignments in effect were correct.

We did tell them that if they were unwilling to close the contract until those matters had been settled, it was entirely agreeable to us although we thought it was bad strategy to leave the contract hanging until the engineers could come in and make the necessary studies of existing [161] point standards and work assignments and then bargain it out with us and our engineers whether any changes should be made. We suggested that a better procedure would be to go ahead and close up the contract for which we were negotiating and make provision in the contract for further negotiations with respect to the correctness of the point standards and work assignments hereto-

fore established. And we offered to make the same provision for their bringing in their engineers to verify and bargain on an intelligent and sound basis with respect to any point standards and work assignments which may hereafter be established. Work assignment, of course, is intended to afford the employee an opportunity to earn the maximum feasible pay under the point plan. It is not always intended that every employee shall do all of the work that can be done on his assignment. It is intended that the assignment afford him the maximum opportunity for earning pay consistent with due use of the machinery and equipment of the mill; so that wherever mill conditions will permit, work assignments are set so as to afford the employee an opportunity to perform at least eighty units of work in an hour, point values and point standards having been so set that a qualified employee can, with proper effort and without undue fatigue, perform at least 80 units of work in an hour; and a great many of the employees do perform much more than eighty units of work in an hour.

[162] Work assignments should therefore conform to and vary according to adjustments of the point standards. While the rate per point in each occupation remains constant and does not fluctuate, that is, the rate of pay per point, there may be for each occupation any number of point standards or point values, depending upon the style or type of product being produced and the nature of the operations, so that within the occupation, work assignments always vary in accordance with the variations in the point standards and the nature of the operations.

The work—We therefore treated the work assignment matter exactly as we did the establishment and adjustment of point standards. We recognized the need and the propriety of the Union making engineering studies on behalf of the employees to verify the correctness, not only of the point standards and work assignments which have already been established, but of any and all point standards and work assignments which may be hereafter established.

Our original proposal offered to permit that effect, provided that the Union engineers should make those studies and that a sincere effort should be made to settle that issue through collective bargaining with the assistance of the technicians from the Conciliation Service.

Openly and in the presence of all members of the Union committee and the Union representatives, I argued with the [163] Company. I contend still that what is a proper point standard and work assignment should be established by collective bargaining and not otherwise. But on account of the

Union having insisted that those disputes should be submitted to arbitration, the Company, contrary to my recommendation, agreed to submit its disputes to arbitration, and the Union was informed of that willingness on the part of the Company on October 17, 1945.

I want to go back just a moment to the guaranteed minimum rates under the point plan. For the most part, the guaranteed minimum rates in effect October 18, 1945, as shown by the rate schedule of that date, which is identified in this record as Board's Exhibit 2—the guaranteed minimum rates shown on that schedule are for the most part either the earnings for a 60-point hour or 55 cents an hour, whichever is greater. There are, however, a considerable number, or several, of those guaranteed rates which are higher than the earnings for a 60-point hour. And throughout the bargaining, whenever the matter was being discussed, I explained to the committee and to the union representatives that it appeared to me that those guaranteed minimum rates did not bear a satisfactory relationship to the remainder of the rate schedule, and I suggested that we should, in bargaining, reach an agreement or a realignment or rescheduling of guaranteed minimum rates.

[164] I endeavored to get the Union to make some proposal in that regard, but it did not do so. I myself suggested that the guaranteed minimum rates should bear a fixed proportionate relationship to the earnings for a 75-point hour and suggested that the guaranteed minimum rates should, with respect to each occupation in the incentive plan, be approximately 25 percent below the earnings for a 75-point hour. I said "approximately" because that was a matter for bargaining, and we were perfectly willing to have the Union assist us in arriving at what would be a proper differential between the guaranteed minimum rates and the earnings for a 75-point hour.

So far as the matter of wages had been discussed prior to October 17, 1945, otherwise than in connection with the frequently repeated discussions of Sections 1, 2 and 3 of Article 2 of the Company proposal, the discussion had centered about the Union's demand for a 5-cent general increase and our explanation as to why we were unwilling to agree to that increase.

We had explained to the Union again so many times that the committee got to leaving whenever I started my little speech again that our wage rates are—were then higher than the rates paid by any other comparably situated mill. Our hourly rates were higher and the average earnings under our incentive wage plan were higher and the earnings at a [165] 75-point hour, which is certainly the intended minimum average—I will ex-

plain that again a little more fully in a minute—of the incentive rate, was higher than the rates being paid by any other mills. They were higher than the so-called guide rates which had been established by the War Labor Board and the Southern Textile Commission for the Twenty-three Mills, which were involved in the rather celebrated *Twenty-Three Mills* case.

We, for that reason, declined to make any wage increase, but we repeatedly reminded the Union and the Committee that Crompton-Highland Mills had always been among the first of the mills in this locality and area to make a wage increase whenever wage increases were being made, and we assured the Union and the Committee that the mill always would be, if possible, among the first to make any wage increase when an occasion for a wage increase occurred.

Now, throughout the bargaining, prior to October 17, the matter of Union security had frequently come in for discussion. At all times, under instructions from the Company, when ever the matter was discussed, I told the Union and the Committee that the Company would not agree to in anywise make membership in the Union a condition of employment. The Company has no objection, we told them, to employees being members of the Union, but each employee has a right to decide for himself or herself whether he or she desires to [166] be a member of the Union. And we told them repeatedly that all employees would be treated exactly alike, whether they were members of the Union or not, and that we would not ever require any employee to be or remain a member of the Union in order to work for us. We also told them repeatedly that we would not check off or deduct the dues of the Union from the wages of employees.

* * *

The WITNESS. At the meeting on October 17, 1945, the [167] Union requested that we furnish it a copy of our wage schedule. The objections of the Union to our proposal with respect to the establishment and adjustment of point standards and work assignments, which is Section 3 of Article 2 of Respondent's Exhibits 3 and 4—the Union's objections to those provisions were more clearly crystallized and stated at that conference on October 17, so that at the conference on October 18, 1945, we offered verbally to amend Sections 1, 2 and 3 of Article 2 of our proposal to meet the Union's objections, or to meet the objections which the Union had up to that time voiced.

We also on October 18, 1945, furnished the Union the wage schedule which had been requested, which is the wage schedule identified in this record as Board's Exhibit 2. In furnishing the Union that wage schedule, we explained it as completely

as possible. I will have to say that when we handed the schedule to the Union, the Union representatives in the bargaining conference said without looking at it that it was not satisfactory. We had some considerable amount of difficulty to get them to even so much as unfold the thing and read it. But by persistent effort we did get them to listen to an attempt to explain the schedule to them. We explained to them at that time that that schedule showed the rate per hundred points for each occupation under the incentive plan and explained that the rate was shown in hundreds of points [168] rather than as a rate per point because in the computation of the week's wages, it was easier to use the decimals from a rate per hundred point than it was to use the decimals necessary to show the rate per point. We explained that the rate per hundred point shown on the schedule could always be converted into a rate per point by simply putting a decimal with two naughts before the first figure per hundred point rate.

* * *

The WITNESS. The October 18 wage schedule to which I have been referring, and we tried to explain it to the committee in this way: We took, for example, the spinning room, which is the second sheet of the schedule, and took the rate of a spinner. We explained to the committee that the Company had during the War Labor Board conferences made two general increases of 5 cents each across the board, that the Company had endeavored to get War Labor Board approval for working those two increases into the incentive rates, but that the War Labor Board had insisted that those increases must be flat across the board increases and must be added as flat cents per hour to the incentive pay of the [169] employees, so that all employees would get equal benefit of those increases irrespective of their production.

We therefore explained that the rate per point would not produce the earnings shown at either a 75- or 80-point hour unless 10 cents was added to the incentive earnings. Take, for example, the spinner rate, which is the first item in that schedule. The rate per hundred points is 75 cents. The rate per point would be .0075. If you multiply .0075 by 75 you will get—You will get, multiplying .0075 by 75, the answer is 56.25 cents. Add 10 cents to it and it is 66.25. And the earnings for a 75-point hour were shown at 66.3 cents per hour.

We explained that to the committee and we used any number of illustrations in explaining it to the committee and to the Union. I have used only one here, but we went through the schedule and did it any number of times and explained it. We

explained to them that we had shown the earnings at 75- and 80-point hours as illustrative of the earnings under the point plan because the 75-point hour is the average—general average—of production under the plan, and the 80-point hour is about what the best qualified and most diligent employees consistently make. Some of them make consistently more than that, but that is good earnings under the point hour. The 75-point hour is about the average. And that is why we use those two figures. But we explained [170] to them that earnings at any other point hour, whether 60, 61, 62, 63, 70, 75 or any given point hour, would be determined in exactly that same way.

Trial Examiner ROGOSIN. Except that your end result, of course, would be different in each instance. Your hourly rate would be different in each instance, depending on the point per hour that you used in computing it.

The WITNESS. Surely. The points per hour are not the same for each occupation, but in each occupation the same point per hour applies to any rate of production so that any spinner, any spinner whatsoever, who has a rate of .0075 per point will get that rate per point multiplied by the number of units produced in the hour, regardless of whether he produces 60, 65, 70, 75, 80, 85, always remembering that on October 18, 1945, there was 10 cents to be added to the incentive rate, and always remembering, too, that if the point hour earnings fell below the guaranteed minimum shown in the last column on the page, applied on the daily basis, they would get guaranteed minimum rates.

Trial Examiner ROGOSIN. And what was your determination of the point per hour basis?

The WITNESS. Point per hour basis?

Trial Examiner ROGOSIN. Yes.

The WITNESS. Their actual production determines the point per hour basis. What they produce determines what [171] point hour they get.

Trial Examiner ROGOSIN. Would you give us a concrete example as to how it is determined what they produce.

The WITNESS. I told you earlier that the matter of establishing the point valued, the point standards and the work assignments is peculiarly an industrial engineering problem which I did not undertake to understand or discuss, because neither I nor any of the Union representatives were industrial engineers; and we simply offered, first of all, to have the engineers make those studies and check it with our engineers and endeavor, with the assistance of the technician for the Concilia-

tion Service, to settle any differences of opinion. And we finally offered, as I will come to in a minute, to submit any disagreements in that regard to arbitration.

Trial Examiner ROGOSIN. Let me interject here, if I may, without disturbing the trend of thought: This point per hour is a matter that is determined in advance of the production?

The WITNESS. No, sir; it is measured by the production.

Trial Examiner ROGOSIN. Of each employee?

The WITNESS. Of each employee.

Trial Examiner ROGOSIN. During his operation?

The WITNESS. Yes, sir.

Trial Examiner ROGOSIN. Continuously.

[172] The WITNESS. Yes, sir. It is measured by the production which he produced at the end of the day; his total production for the day.

Trial Examiner ROGOSIN. When you realize the production which he has accomplished at the end of the day, you have some means of determining——

The WITNESS. How many points he gets.

Trial Examiner ROGOSIN (continuing). By mathematical computations, how many points he gets?

The WITNESS. Yes. That, I am sorry to tell you, I cannot explain because that is a detail of the operation of the plan which seemed to me then and seems to me now to be outside the scope of bargaining for a contract in the general bargaining which we were having. That is a matter which their engineers may disagree with our engineers about, and if they do, we always offered to try to settle it through bargaining. We shall now offer to submit it to arbitration.

Trial Examiner ROGOSIN. Do you understand there is some sort of mathematical formula for computations?

The WITNESS. Yes.

Trial Examiner ROGOSIN. Which enables an industrial engineer to determine at the end of the day what a given employee's production translated into points per hour would amount to?

The WITNESS. Yes, sir. Better still, I am convinced [173] that anybody who works in the mill can do that.

* * * *

Trial Examiner ROGOSIN. Well, is it your opinion that anyone could arrive at a rate per hour without having the information with respect to what the employees' points per hour would be?

The WITNESS. Well, of course, you would have to know—in order to compute the pay, you would have to know what any employee had produced, you would have to know what his unit of production or points of production were for that day and that period of time, but you have got the rate. The thing we were

bargaining for was the rate of pay, and that was the rate per point or unit of production. What constitutes a point or unit of production is, of course, now a fixed thing easily determinable on the basis of the number of banks or the number of picks, or whatever the unit of production in this particular department.

Trial Examiner ROGOSIN. The points am trying to clarify, if I can, is whether or not in determining what the rate per point should be, they know the factors with respect to the point.

[1754]. The WITNESS. That, of course, is what I was trying to explain to you, sir; that we were bargaining for rates of pay. There are two sorts of rates of pay. There are hourly rates of pay. You, of course, don't have to bargain as to whether an 80-cent hourly rate of pay is correct. You don't bargain with respect to how much work the fellow does, in negotiating the original contract. That may be handled later under the provisions of the contract as we offered to handle it here. But the thing you bragain for is the rate of pay with respect to these incentive rated jobs, it was still the rate of pay. We realized that to simply talk about pay in terms of pay per point or pay per hundred point would not furnish a proper basis for bargaining. We therefore illustrated the effect of those rates per point and rate per hundred points by showing the earnings at illustrative hours of 75- and 80-point hours, were the hours we picked.

We also told them, however, that the same information could be obtained with respect to any point hour of production by simply multiplying the rate per point by the unit per hour production, adding 10 cents to it. And we told them, having agreed on these rates per point illustrated by these earnings at various point hours; the only area of disagreement thereafter, that there could thereafter be, would be with respect to whether or not a person had to do too much [1755] work in order to earn those anticipated earnings shown by the schedule. And we told them, reminded them repeatedly, that we had offered finally, after October 18, to submit disputes with respect to whether a man had to do too much work to earn that pay, and, that is to say, a dispute with respect to the point standard or work assigned, we had offered to submit to arbitration; and that was what we were trying to—the basis on which we were trying to get them to agree with us on the contract. We realized that the Union, on behalf of the employees, would inquire into the propriety of point standards and work assignments. We realized that it should agree with us on the rate of pay and that the rate of pay; now that we are dealing with the Union, is peculiarly a matter for collective bargaining no matter how it may have been established some other time; it is to be established now by collective bargaining and we tried to get them to

agree with us in the contract on the rate of pay, reserving for handling under the contract finally with disputes to be submitted to arbitration, any disagreement as to whether the point standards and work assignments were so set as to require the employees to do too much work in order to earn the intended rates of pay; and not intended rates of pay, because they would earn the rates of pay regardless of how much work they did, but whether they would have to produce too large a point hour to get the anticipated [176] earnings, would be more correct to say.

* * *

The WITNESS. We tried to discuss with Mr. Douty the changes which we were willing to make in our work assignment, point standards—in the work assignment and point standard sections of our contract. And he simply declined to discuss those things with us on that day at all. Each time we tried to discuss that subject, he told us that we had to get the union security settled, that he couldn't have a contract that didn't include union security provisions satisfactory to him.

Mrs. Kanun came into the conferences for the first time on October 18, 1945. After we had been discussing the matter for some time, and as Mr. Douty was folding up his [177] papers preparatory to breaking off the negotiations, I realized——

Mr. PURDOM. Objection, Your Honor. The conclusion as to breaking off the negotiations——

Trial Examiner ROGOSIN. "Breaking off the negotiations" may be stricken.

The WITNESS. Well, as Mr. Douty was folding up his papers preparatory to marching out of the room, I realized that Mrs. Kanun had not caught the point that we were willing to guarantee the rates per point and earnings that result in point hours against reduction during the life of the contract. And I reiterated that point to Mrs. Kanun. Mrs. Kanun then turned to Mr. Douty and in our hearing said: "I think we had better go into this wage matter further."

And Mr. Douty said to Mrs. Kanun in our hearing, "There is no sense in talking about it any further." And with that he left the room.

The Union, Mr. Douty speaking for the Union, told us on October 18 that negotiations were at an end and that the Union would give notice of its intention to strike.

Let me say, if I may, that I frankly took that as a bargaining strategy movement. I construed the breaking off of negotiations on October 18 as simply bargaining strategy and I likewise construed the threat of strike vote as simply bargaining

strategy. However, after the thing went on for [178] some days and we did not hear any more from the Union, I became fairly well convinced that the Union had sincerely broken off the negotiations.

Shortly prior to November 7, 1945, and I should say three or four days prior to November 7, 1945, Mr. Lacey, of the Conciliation Service in the Atlanta Office, requested a conference to see if we could iron out our differences and avoid the strike which the Union had given notice of intending to call. As I understood it, the conference was not requested by the Union but was instigated solely by the Conciliation Service.

We met with the Union in the offices of the Conciliation Service in Atlanta. Back on October 18, when we furnished the Union the wage schedule which we have been talking about which the Union requested, without looking at the wage schedule, they said it was not what they wanted and that they wanted a statement of average hourly earnings. We prepared that statement in anticipation of the Union requesting another bargaining conference. Since the Union didn't request another bargaining conference, we submitted the October 26 summary of average hourly earnings, which has been identified in this record as Respondent's Exhibit 1, to the Union at the conference of November 7, 1945.

The Union did not look at it, did not examine it, but simply said immediately when we handed it to them that it [179] was not what they wanted and they weren't satisfied with it. They said that without so much as looking at it.

Back on October 18 we had outlined verbally our willingness to amend Sections 1, 2 and 3 of Article 2 of our proposal with respect to wage rates and work assignments; and, while we were reluctant, in the face of a threat of a strike, to make any concessions, we nevertheless, in the hope of being able to compose our difficulties with the Union, prepared and formally submitted to them at the conference on November 7, 1945, amendments of the counterproposal with respect to wage rates and work assignments, which document has been identified in this record as Respondent's Exhibit 2.

In that amendment of our counterproposal we sought to meet every objection which the Union had raised to the previous proposal. We said specifically that the rates and earnings as were shown by said schedule—after it was said specifically that a schedule of hourly minimum rates is attached hereto. And then we went on to say: And rates and earnings as shown by said schedule will not be increased or reduced during the terms of this contract unless a general increase or

reduction of wage rates is mutually agreed upon in collective bargaining.

Trial Examiner ROGOSIN. Is there a schedule annexed to that?

[180] The WITNESS. No, sir. We are using the same schedule as used on October 18, 1945. There was no schedule attached at that time. We had previously furnished the wage schedule.

To meet their principal objection we provided if our engineers and their engineers should be unable to reach agreement with respect to any point standard or work assignment heretofore or hereafter established, the matter in dispute might be submitted to arbitration, and we proposed machinery for submitting it to arbitration.

Although we had met in the Conciliation Service Office with the hope of composing our differences; although the Company had gone to the trouble of drafting in formal shape an amendment of its counterproposal with respect to one of the matters which had kept us apart in the negotiations, I regret to say when we handed this counterproposal to the Union, neither Mrs. Kanun nor Mr. Douty nor any member of the Union committee read it or looked at it. But Mr. Douty and Mrs. Kanun and several members of the Union committee, without looking at it or reading it, said that it was not satisfactory.

I won't undertake to go into, at this time, the matters which were discussed at great length at that conference, except to say that they pertained entirely to the security of the union and the collection of the union's dues and not to matters pertaining to the terms and conditions of the [181] employment of the employees.

Trial Examiner ROGOSIN. May I interrupt for just a moment. Do I understand there was no change in the wage schedule submitted on November 7——

The WITNESS. No, sir.

Trial Examiner ROGOSIN (continuing). Over that of October 18?

The WITNESS. That's right.

Trial Examiner ROGOSIN. What was the substance of change in the proposal?

The WITNESS. What was the substance of change in the proposal? The biggest substance of change in the proposal was our agreement to arbitrate dispute with respect to point standard and work assignments. The Company declined to make any general wage increase with the limited exception of the thing which occurred on December 19 which we will talk about in a minute.

Mr. PURDOM. I didn't catch that. Did you say "did" or "did not" decline to make a wage increase?

The WITNESS. The Company throughout the bargaining up until December 19, declined entirely to make any general wage increase. And the thing that occurred on December 19, we will talk about a bit more in a minute.

We came back to Griffin for a further bargaining conference on November 8, 1945. At the very outset of that [182] bargaining conference, Mr. Douty told us that the Union will not ever sign any contract irrespective of its other provisions unless that contract includes provisions satisfactory to the Union for the security of the Union and the collection of its dues.

We reiterated to Mr. Douty again that we did not feel any obligation to provide his union with security, that we were not going to require any employee to join or become a member of his union, and that we would not collect his dues for him.

We made various and sundry provisions for assisting the Union in the collection of its dues, but the Union insisted that we collect its dues for it, and we declined to do that.

So Mr. Douty told us that we might as well quit talking about a contract because he would not ever sign any contract, nor ever agree to any contract, irrespective of any other provisions of the contract, unless it included provisions satisfactory to him for the security and protection of the union and the collection of the Union's dues.

At the end—as that conference on November 8 was breaking up, Mr. Douty told us that he wanted us to understand that the Union had been prepared and had intended cooperating with the Company in making the employees like the point plan of incentive wage payment, that the Union believed that it [183] could make the employees like the incentive wage plan, but believed that the Company could not do so, and that the Union had been prepared and had intended cooperating with us in making the employees accept and like the point plan; but that if we were not going to protect the Union by giving it security so as to require that at least its employees who had already joined the Union maintain their membership in the Union, the Union would do everything which it could to discredit and try to destroy the point plan. He simply predicated his support of, or opposition to, the point plan on whether or not the Union obtained provisions in the contract satisfactory to it for its own security and the collection of its dues.

Mr. Douty on November 8 definitely broke off and terminated all bargaining negotiations, and we no longer thought that that was a strategy matter. We regarded that as a sincere and final breaking off and termination of bargaining negotiations.

However, in the interval between November 8 and December 19——

Mr. PURDOM. Objection, Your Honor, to statement that Mr. Douty broke off bargaining negotiations on that date without stating the facts on which the conclusion is based.

The WITNESS. After that Mr. Douty stated that he was definitely and finally breaking off and terminating the [484] bargaining negotiations. That is what I meant to say.

However, after November 8, Mr. Merryman received a letter from one member of the committee, and we understood Mr.

Trial Examiner ROGOSIN. Who?

The WITNESS. Mr. Merryman, vice president of the Company received a letter from one member of the committee, and we understood that the bargaining committee itself desired to resume negotiations. Let me look and see what the date of the telegram was [witness examines document].

The WITNESS. The Company then received telegram from Mr. Douty which has been identified in this record as Respondent's Exhibit 5, saying that all matters I will read it. Saying the union had "unanimously voted to place further action at Crompton-Highland Mills into hands of negotiating committee." And that that committee had asked him to request a conference for December 14.

We were unable to arrange the conference on December 14, but did arrange for it and it was held on December 19, 1945. Nothing was accomplished at the December 19, 1945, conference. Mr. Douty again told us at the outset of the conference that he would not agree to any contract, irrespective of its other provisions, unless it included provisions satisfactory to him for the security of the union and the collection of the union's dues.

[485] We told Mr. Douty that in our opinion he was putting his own interest ahead of the interest of the employees whom he was purporting to represent, whom he had sought and obtained authority to represent, and that, in our opinion, was utterly contrary to, and in derogation of, his duties as the sole and exclusive bargaining agent of the employees.

We did, however, on December 19, have further discussion with respect to wage rates. We were still trying to find some possibility of composing the differences between the Company and the Union. We therefore told the Union that there no longer being any War Labor Board controls to prevent our doing so, we would add the two five-cent increases into the incentive rates, putting them in at a 67-point hour. We explained that a general increases could be put into the incentive rate plan at any particular point hour.

As Mrs. Kanun told you yesterday and as was discussed in the bargaining, the increase means more to the employees if it is put at a lower point hour than if it is put in at a higher point hour.

Mrs. Kanun pretended at that meeting—appeared at that meeting to be somewhat confused about the rate per hundred point, and talked about hundred point hours. I explained to her very fully that day for something like the third or fourth time that the rates were expressed as rates per hundred points simply to facilitate the calculations of the weekly [186] pay, but that they were really rates per point, explaining to her again how to convert them into rates per point.

I want to say parenthetically at this point, and perhaps I should have mentioned it sooner, that so far as this matter of 60 point-hours is concerned, the only discussion which Mrs. Kanun and I had, and as far as I can remember, she and I are the only people who had this particular discussion; the only discussion which Mrs. Kanun and I had with respect to 60-point, 75- and 80-point hours, other than as I attempted to illustrate the operation in the plant, was with respect to Mrs. Kanun's contention that the so-called guide rates established by the War Labor Board and the Textile Commission in the Twenty-Three Mills decision should be our 60-point hour earnings, that we should revise our schedule. This was her bargaining contention, that we should revise our schedule so as to make those guide rates the earnings under our schedule at a 60-point hour.

I explained to Mrs. Kanun that aside from the fact that we were not bound by that decision, that inasmuch as that decision was intended to set a peg for the industry in the South, that we were willing to use it as somewhat the basis for our bargaining and I explained to her that that decision provided expressly that where jobs are compensated on an incentive rate of pay, the intention of the decision was that the incentive rates should be fixed so as to yield [187] average earnings at least equal to, or in excess of, the incentive of the so-called guide rates.

I demonstrated by showing her the October 26 summary of average hourly earnings in comparison with the guide rates, and we demonstrated by calling her attention to the guide rates in comparison with the earnings for 75-point hour shown by the October 18 rate schedule that our average earnings, as well as the earnings for the 75-point hour, are well in excess of the—or were at that time well in excess of the guide rates. And we declined at all times to consider her request or demand

that we make the guide rates the earnings for our 60-point hour and adjust the schedule accordingly.

The only other conversation or discussion which I had with Mrs. Kanun with respect to 60-point hours was that on October 19, 1945, I told her that we were offering to put the two 5-cent increases into the incentive schedule at a 67-point hour so that the earnings—the increase at a 67-point hour would remain the same ten cents that it had always been. It would obviously be reduced some; that is, below a 70-point hour; that is, a 67-point hour, but earnings at an 80-point hour, I called attention to the fact, would be 2 cents more than they were by simply adding the 10-cent increase to the incentive earnings as a flat across the board increase.

Those are the only discussions that Mrs. Kanun and I [188] had with respect to the matter of the 60-point hour. We had those discussions many, many times. That is to say, we had the first one about whether we were going to make the guide rates our 60-point earnings. We had that discussion many, many times.

* * *

CROSS-EXAMINATION

* * *

[202] By Mr. Purdom:

Q. Didn't you, Mr. Williams, at all times during the negotiation, state that as soon as the negotiations were completed that the Company was ready to put the jobs which were ever going to be put on the incentive plan, on the incentive plan immediately?—A. No, sir. On the contrary, Mr. Purdom, the wage schedule which we gave to the Union on October 18 showed by footnotes various jobs for which incentive rates had been established, but on which incentive rates had not yet been applied. And we told the Union that as fast as we could, and that we could do it faster with its cooperation, we would afford the employees for whom incentive rates had been established, but with respect to whom application had not then been made, [203] the opportunity to earn the higher rates of pay. We illustrated that particularly with the job of battery filler. We told them we had incentive rates established for the battery filler job, but applying incentives of the battery filler job was going to require the cooperation of the battery fillers, the weavers, and the fixers and certain other employees in the weave room; and that we had been reluctant for various reasons to apply the incentive rates to the battery filler job, but that with their cooperation it could be done very quickly, that our work was all set and that they would be given the opportunity—the battery fillers could be given the opportunity

to substantially increase their earnings, but we showed them with respect to any number of jobs, all of those followed by parenthesis 3—all of the job classifications followed by parenthesis 3 were jobs for which incentives had been established but not yet applied. And we did say to them, as fast as we could complete the incentive plan, and we could do it faster with their cooperation than we could without——

Q. During the bargaining conference, in discussing this guaranteed minimum, when you were asked if it was based on a 60-point unit value, didn't you say that it was not?—A. No, sir.

Q. Did you ever say that it was?—A. I think I told Mrs. Kanun this, Mr. Purdom, which is [204] the fact: That the guaranteed minimum is either, in most instances, the earnings at a 60-point hour or 55 cents, whichever is agreeable, except that there are some several jobs for which higher than that guaranteed minimum is provided. I did always tell Mrs. Kanun that I did not think the guaranteed minimum rates bore a proper relationship to the wage schedule and that I would recommend a proposal from her as to a better way to relate the guaranteed minimum rates to the wage schedule.

Q. Didn't the Union give you a proposal on the guaranteed minimum on November 8?—A. I think their proposal of November 8 did include the guaranteed minimum rates [witness produces paper].

(Continuing.) Yes, sir; the proposal which they submitted on November 8 did include guaranteed minimum rates.

Q. Now, on October 18, sir, when Mrs. Kanun requested the base rates for the jobs and asked whether the 75-point hour figure or the 80-point hour figure was the base, you went into quite an involved discussion, and didn't you at that time say that there was no base, but that these figures were just point hour earnings?—A. I did go into quite an involved discussion. I did not say that there was no base. I did tell Mrs. Kanun that the 75- and 80-point hour earnings were included on the schedule [205] simply as illustrative of the earnings at those point hours to illustrate the earnings which would be produced by application of the rates per point shown on that schedule.

* * *

[206] Q. What kind of cloth do they produce at this mill, Mr. Williams?—[207] A. Mr. Purdom, let me suggest that Mr. Pickford and Mr. Ethridge are both going to be on the stand, and what I have tried to do is tell you what I said to the Union in bargaining, and that is really as much as I can do about it.

Q. Do you know what kind of cloth——A. I have heard it said that they—velveteen—I really don't know.

Q. More than one type?—A. Yes; several types, of course.

Q. Now, when they change from one type of cloth to another, the number of looms that a fixer fixes changes, doesn't it?—A. The point standards will vary according to types and styles of production, and work assignments must be varied according to the variations in point standard, so that whenever, for a different style or type of production, there is a different point standard, there must also be a different work assignment.

Q. So the value of points can go up or down depending on the type of work?—A. If you mean the value of points in cents per point, no, sir. The value of points in cents stays the same.

Q. The same.—A. But the measure of the unit of production changes and points vary according to style and type of production.

Q. Therefore, the Company has to have records there at its [208] place of business on which it can figure the rates of pay, regardless of the type of work it is doing.—A. Yes, sir. Each unit of production can be converted in accordance with the schedules posted on the bulletin board into points and a day's unit of production can be converted according to the schedules on the bulletin board into points and that point is multiplied by the rate per point to produce the pay.

Q. And each point, regardless of the style, is a minute's work, isn't it?—A. No, sir; I don't so understand that. Each point is a unit of production.

Q. Now, those papers you read to the Board said it was.—A. I am telling you what I understand to be the fact: that a point is a unit of production. How the engineer goes about getting the unit of production, I do not know and have said I don't know.

Q. So the Company has to know at all times, does it not, the points, the values on those points, to be able to compute the pay a worker earns on the particular type of production?—A. That information is kept posted on the bulletin board at all times.

Q. And that is your C. L. Stevens System, isn't it, on the incentive system?—A. I don't think that question is stated so it can be [209] answered. The C. L. Stevens Company installed the point plan at Crompton-Highland Mills. The point plan at Crompton-Highland Mill is the Crompton-Highland Mill point plan which was installed by C. L. Stevens.

Q. And that information has to be used in figuring the earnings?—A. That information has to be used in figuring the earnings and is on the bulletin board in the departments.

Q. And the mill has got it out there in their office.—A. They have got——

Q. They have that that is necessary to figure raises.—A. Surely, surely, surely. Books of it. Books of it.

* * *

[210] Q. Didn't you present as a wage proposal the rates that were then in effect?—A. Yes, sir.

Q. On a hundred units and what anticipated earnings might be at 75 or 80?—A. I presented as our wage proposal the rate per point explained in rates per hundred points and illustrated the earnings by showing the earnings at 75- and 80-point hour points.

Q. And said, "That is what we will give."—A. That's right, and said, "That is what is in effect, and we will continue it in effect."

* * *

[213] Q. You know if you put an increase in wages on a 67-point hour or a 70-point hour base or 80-point hour base, that a, say a dime, 20 cents, will result in less increase in earnings than if it is put in on a 60-point base.—A. Yes, sir. We explained that to the Union at the conference on December 19 when we told them we were putting in the 10-cent increases at 67. There was argument whether they should go in as 67 or some other figure, but that was our proposal, to put them in at 67. We explained the two 10-cent increases would still be 10 at 67 but 12 cents by the time they got up to 80, and they would have been more if it had been put in at 60. And we did finally put those two increases in at 60, as of December 31, 1945.

Q. Do you recall during those conferences, and Mrs. Kanun's testimony, that when she asked on what basis a guaranteed daily minimum was figured, you replied, it was merely on a historical basis?—[214] A. No, sir. I didn't reply that. I will tell you what I did reply, if you will. I replied to Mrs. Kanun that the guaranteed minimum rates did not seem to me to bear a proper relationship to the rest of the rate schedule, that I thought they ought to be a certain percentage below either the guide rates or the 75-point hour earnings, and wherever the 75-point hour earnings were used, I thought they should be about 25 percent below the 75 point-hour earnings. But I requested Mrs. Kanun on any number of occasions to make a suggestion as to minimum rates. The only suggestion she ever made as to minimum rates was to take the guide rates, which were supposed to be average hourly earnings, and suggest them as minimum rates, which, of course, was not acceptable to us.

Q. Do you recall that in the December 19 conference, according to Mrs. Kanun's testimony, that when she again raised

the question about a 60-point-hour base rate, that you replied that the incentive system per unit was as listed in the hundred unit column?—A. Mr. Purdom, I don't think the question was asked that way or answered that way. The only argument Mrs. Kanun and I ever had with respect to 60-point hour was with respect to whether we should take the guide rates established by the Board and the Textile Commission and make them the hour earnings for a 60-point hour; and that we declined to do.

[215] Trial Examiner ROGOSIN. The rates established by the Board and the Textile Commission?

The WITNESS. Yes, sir.

Trial Examiner ROGOSIN. The War Labor Board?

The WITNESS. Yes, sir.

By Mr. PURDOM:

Q. Didn't Mrs. Kanun request the base rate for a 60-point hour and the number of points per hour produced by each worker?—A. If she ever asked for the rates for a 60-point hour, I don't recall her asking that way. But I know I did tell Mrs. Kanun on a number of occasions, possibly in response to that sort of request, that the earnings from a 60-point hour could be determined from the October 18 schedule by multiplying the rate per point by 60 and adding 10 cents to reflect the increases. The rates for any point well could be determined in exactly the same way.

Q. You didn't furnish the information, but made that explanation.—A. I told her we could compute it from that information, and, as a matter of fact, I think we took quite a few of the rates and computed them on the 60-point hour and computed them on that base.

* * * *

[218] By Trial Examiner ROGOSIN:

Q. Well, was it your position, Mr. Williams, that the rate was not a factor in determining the hourly earnings of the employees?—A. The rate is a factor. The daily earnings of an employee are converted his units of production, into points, multiplying the points by the value per point, the rate per point.

Q. Well, in determining whether or not the hourly rate was adequate, the determination of the basis upon which the rate per point was fixed would be a factor, would it not?—A. I don't think so, Mr. Examiner. Here is the position we took with the Union: There is no such thing as proper pay for doing an unreasonable amount of work. The employee must do a fair day's work and get a fair day's pay. We were bargaining for the rate

of pay which, under the plan, is a rate per unit or point of production, and that rate per point or unit of product on we illustrated by showing what the earnings would be at various points, hours and explaining they could determine the earnings at any point-hour by multiplying that rate by the number of points.

What is a proper unit of production for the purposes of that plan is an engineering problem, and we offered to arbitrate that question.

[219] Q. If I understand your contention, or the Company's contention, it is substantially that you afforded the Union adequate information upon which to determine whether the rate was fair and equitable?—A. That's right, because we gave them the rate and we illustrated the rate with earnings, and we offered to arbitrate whether in order to get those earnings they would have to do too much work. They were not bound by point standards and work assignments in effect, but they would be submitted to arbitration.

Q. What I am trying to get clear is this: In order for the Union to determine whether or not the rate per point was adequate, reasonable, equitable—call it what you want—from the Union's point of view, would it not be necessary for the Union to have the information from which the determination was made of the rate per point value?—A. I don't think so, sir. I think what they needed to know was the rate per point, illustrative point hour earnings, and then possibly what was much more important to them and what we were glad to give them was the actual average hourly earnings of the present group of employees at those rates per point; and we gave them those earnings and demonstrated to them, by comparing them with the so-called guide rates, that the actual average earnings at those then current rates per point were in excess of the guide rates which the Board [220] had established.

Q. Let me see if I can simplify this in my own mind. Let's assume hypothetically that the rate per point the Company had established, translated into cents per hour, which I suppose, is ultimately the thing the employees are concerned with——A. Yes, sir.

Q. (Continuing.) Was 60 cents an hour, and that the Union felt that the employees should receive 65 cents an hour?—A. That's right.

Q. You prefer, or the Company prefers, to treat that on an incentive point system of some sort?—A. We were already doing that.

Q. Very well. How would you translate that back into units from the cents per hour rate?—A. Well, now, a 10-cent increase or a nickel increase or any other general increase which we

could have agreed upon could have been added in at any one of the point hours. As of December 19 we offered to add in the 10-cent increase at a 67-point hour. We finally did add it in at 60-point hour.

And should we agree with them on another increase at some future time, it will be a matter of bargaining as to whether that increase is put into the plan at a 60-, 65-, 67-, or 70-point hour.

[221] Q. How would that affect the rate per point?—A. Because it will—the lower the point hour at which the increase is put into the incentive system, the higher the rate gets as production increases.

By Mr. PURDOM:

Q. Mr. Williams, I believe you said your instructions from the Company were from the beginning not to agree to union security or check-off.—A. From the very first conference which we had with the Union, on instruction from the Company I told them that we would not agree to union security or check-off.

Q. During the entire negotiation, did you ever offer, in lieu of union security or check-off, to give an increase, say, of 20 cents an hour in wages?—A. I would not have done that sort of thing; no, sir. I did not do that sort of thing.

Q. You did not then, on that proposition of wages, offer an increase of wages in lieu of a check-off?—A. I did not; no, sir; no, sir. As a matter of fact, I was shocked when Mr. Douty offered to support our point plan if we would give him union security.

Q. In other words, on union security, you went in there with a predetermined idea that it was not going to be given regardless?—A. We are of the firm opinion that union security is not our responsibility.

[222] Q. And under no circumstances would you give a check-off?—A. We were not willing to give a check-off.

Q. And you didn't ever, on any other propositions, try to bargain by giving the union something else in lieu of that?—A. Yes, sir; we tried very hard. At the conference with the Conciliator on November 7, the Conciliator made a suggestion whereby the Company might cooperate with the Union in enabling the Union to collect its own dues. We offered to accept the Conciliator's suggestion; the Union turned it down and insisted that we collect the Union's dues for it, which we declined to do.

Almost all of our conference on November 8 was devoted to trying to work out a mutually agreeable way whereby the Company could assist the Union in collecting its own dues, which we were perfectly willing to do.

We were not willing to collect the Union's dues for it. If it matters, and to be specific, the thing we tried to work out on January 8 was that we would put in each department of the mill——

Q. Not January 8?—A. November 8, I mean to say. (Continuing.) That we would put in each department of the mill a box marked "Union Dues," and that we would give the employees on the first pay day of each month two checks, one for whatever the amount of the Union dues are or may get to be, and the other for [223] the balance of their wages, and that we would put a shelf like the one over there [indicating] an upright, stand-up height shelf, by that box and would keep a pencil and pen there.

We even finally offered to put a stamp there "Pay to the order of the Textile Workers Union of America" to facilitate employees in endorsing checks, and let them drop them in that box for their union dues.

The Union wouldn't agree to that. The Union wanted no part of the responsibility for collecting its own dues. The Union insisted that we collect its dues for it; and that we were thoroughly unwilling to do.

Q. Didn't the Union make a counterproposal that you have the second check made payable to the Union and the Company refused?—A. That's right. We declined to do that. We think that anything we do to help the Union collect its dues is that much more than we got to do, and we thought we were going way beyond any obligation in the proposal which we made.

Q. Didn't the Union offer to put someone in the office to do the extra work and pay them on extra bookkeeping?—A. I think they did, but we weren't willing to have the Union working in our office.

Q. And you never made any counterproposal on the wage section of the contract in lieu of the union security: [224] We will give you an increase in wages?—A. Mr. Purdom, it would shock me to think anyone would bargain on that basis. I think these things ought to be bargained on their own merits. No, sir; I didn't try to buy my way out of union security. I will not ever try to buy my way out of union security.

Q. You didn't try to bargain your way out?—A. Yes, sir; I did. I tried as fully as I could to explain to the union why we did not give them union security, and I have a speech I can make again if you want to hear it.

Q. On wages during these same conferences you were as adamant on your position of wage increase as the Union was on union security?—A. We were adamant on both positions.

They wanted a 5-cent increase; at that time we were unwilling to give it. They were adamant on Union security, and we weren't willing to give it.

They broke off negotiations on December 19, and after they broke off negotiations on December 19, we didn't understand we were to have any more bargaining with them; they told us they were through bargaining with us and we took them at their word.

Trial Examiner ROGOSIN: Is that your conclusion or did one of the Union representatives make that statement?

The WITNESS. Mr. Douty told us he was breaking off and [225] terminating the negotiations on December 19.

Trial Examiner ROGOSIN. In substantially those words?

The WITNESS. In substantially those words; yes, sir.

By Mr. PURDOM:

Q. Now you say on December 19 you were not ready to give a nickel increase; is that right?—A. We were not.

Q. How did you happen to be ready on January 1 to give it?—A. Mr. Pickford—I was not in Griffin at that time. Mr. Pickford is going to take the stand and explain it.

Q. What do you know? I am not asking what Mr. Pickford knows.—A. I will tell you what I have been told. Would you rather hear what I have been told on what the reasons were than the man who told me that?

Q. What do you know?—A. All right. All Griffin, Georgia, is a relatively close community. The primary industry in the community is textile. Crompton-Highland Mills is quite proud of the fact that its wage rates have always been at least as high—most of them a little higher than other wage rates in the community. It is intent upon maintaining that position as long as it can. It has always been among the first to make wage increases in the community and it always means to be among the first to make wage increases in this community if it [226] can.

It learned through the way things like that get around, that other mills in this community were about to make a wage increase and it didn't want those mills to get ahead of it. It wanted to be sure that it made the wage increase just as quickly as anybody else in this locality did. It must maintain its position on competitive wage rates as long as it possibly can. It therefore decided that it wanted to be among the first to make the wage increase, and I don't know whether it got it in time to be the first or not, but it certainly was among the first.

Q. Don't you know that the announcement came out simultaneously from all the mills?—A. No, sir; I don't know that.

I don't know, as a matter of fact, Mr. Purdom, that any other mill in Griffin has made a wage increase. I mean, I don't know that of my own knowledge, nor as far as I can remember has anybody told me that they did.

Q. Do you know how much increase the Dundee Mill gave?—A. No, sir.

Q. How about Thompson?—A. Thomaston?

Q. Yes Thomaston.—A. No, sir; I don't know whether they gave an increase at all or not. I have heard that they gave an increase, but I [227] have no idea what it was.

* * *

Cross-examination (continued) by Mr. Douty:

Q. I would like to ask you first, Mr. Williams, if it is true that in our conference on October 19, that the burden of the conference was not given to discussion of wages.—A. We didn't have a conference on October 19.

Q. October 18 then.—A. October 19, no, sir—well, yes; let me tell you exactly what was discussed at our conference of October 18.

Q. I asked a question that seems to me you can give a simple answer.—A. I am trying to evaluate the thing by looking at a note made at the time and see whether I can say whether the majority of the discussion was with respect to wages [witness examines document].

(Continuing:) No, sir; I would say that the majority of that discussion was not with respect to wages. I would say that the majority of the discussion on October 18 was with respect to union security insofar as any one item predominated over another. I wouldn't say the majority of [228] the time. Wages—or security, I would say, took up more time.

Q. There were a number of issues discussed at that time?—A. Yes. Vacation clause was discussed, for example.

Q. That is enough.—A. That was not all, by the way; I can tell you what all was.

Q. The point is: There were many issues discussed on that day.

Now at the conference in the Conciliation Office on November 7, do you recall that the meeting opened with a long speech by Mr. Richmond in which he attempted to demonstrate that the Company, which had just given a wage increase in its Rhode Island mill, had no grudge against the South?

* * *

[229] By Mr. Douty:

Q. The point I was trying to make: The meeting began with quite a long speech by Mr. Richmond, the president of the

Company, having to do with wages.—A. That is true; yes, sir.

Q. Then the question of a general wage increase was again discussed at that meeting?—A. That's right.

Q. And the union security provision was again discussed at that meeting?—A. Consuming most of the discussion at the meeting; yes, [230] sir.

Q. Do you recall that our argument was based chiefly in our discussions on the fact that to us a union security clause was an evidence of good faith?—A. Yes, sir.

Q. It was our experience that where Companies refused, then they were not bargaining in good faith, and didn't attempt to, and were intending to destroy the Union.—A. That was your statement.

Q. When the companies refused to tell the employees how much the fees were when the employees asked them to deduct dues, we could not regard it as bargaining in good faith.—A. You didn't say you could not regard it as bargaining in good faith. You said; when they would not agree to deduct dues on the authorization of the employees, you construed that as an implication that the Company wanted to get rid of the Union.

Q. That's right. Didn't we also discuss at that meeting in some detail the question of peg points as a basis for 60-point hour?—A. You again asked that we make the peg points our 60-point hour earnings, and we again declined to do that.

Q. And we asked for a third shift differential?—A. Yes; I believe you asked for a third-shift differential. [231] And I don't remember whether our counterproposal was submitted that day or the next.

Q. No; it was not then. Also on the jobs we asked for specifications for the jobs and you indicated you might give them the next day at Griffin?—A. I may have said—on my own recollection, it was the next day in Griffin when Mrs. Kanun and I had the discussion about job specifications.

Q. Do you recall that at that meeting we offered the Company to arbitrate the issues that weren't settled?—A. Yes, sir.

Q. By either the Conciliation Service or any other means of arbitration?—A. Yes, sir. And we replied to you, contracts could not be effectuated by arbitration but had to come into existence by a meeting of the minds of the parties.

Q. Do you recall the next day at the meeting in Griffin as well as discussing union security, which you contended was about all we discussed, after that we discussed at some length the guaranteed daily minimum, and that is where you made a tentative proposal it would be 20 percent below the 75 points?—A. I think that is true. Wasn't my proposal 25 percent below

the 75 cents? I think mine was 25. I think 20 percent was Mrs. Kanun's suggestion.

[232] Q. At that meeting do you recall that we submitted a wage proposal that Mrs. Kanun typed partly in the Company's office?—A. No; the wage proposal which Mrs. Kanun typed entirely in our office was submitted on November 8.

Q. That is what I am talking about.—A. November 8, yes.

Q. Yes.—A. Yes; Mrs. Kanun went out and typed a wage proposal and submitted it.

Q. And the Company rejected the 5-cent general increase incorporated in that?—A. Yes, sir.

* * * *

[233] By Mr. Douty:

Q. Then in addition to our union security discussion, we had a general wage discussion; is that correct, on that date?—A. December 19?

Q. Yes, sir.—A. We didn't have much of a general wage discussion. We talked a bit about the wage matter; yes, sir.

Q. Isn't that when you made a proposal on a graduated third-shift differential?—[234] A. Yes, sir.

* * * *

By Mr. Douty:

Q. Was it at that meeting that you first proposed to put the 10 cents across the board increase that had been given during the year into the base rates?—A. Yes, sir.

Q. Is it true that that meeting, like the other meetings that we had, terminated because of the inability of the parties to get together on union security or wages or a work load section, on the vacation and the other rejected sections of the contract?—[235] A. Mr. Douty, I can only answer that by saying that I think that the conference, like most of the other conferences, terminated because we would not give you union security.

* * * *

[237] By Mr. Purdom:

Q. When negotiations were terminated, broken off, or however they ended, on December 19, wages had not been agreed upon, had they?—A. No, sir.

Q. Or Union security had not been agreed upon?—A. No, sir.

[238] Q. Work assignments had not been agreed upon.—A. No, sir.

Q. The arbitration clause, the selection of a neutral party that I spoke of, had not been agreed upon, had it?—A. And that is the only part, as I understand it.

Q. That is the only part that had not Safety and health had not been agreed upon.—A. Yes, sir; it had. It was agreed on November 7.

Q. In the union activities section that is designated somewhat differently by you.—A. I will have to check that. I think you are right. I think there is a section here called "Solicitation," which is Section 3 of Article 8 on page 20 of Respondent's Exhibit 4, which I believe is still marked "not in agreement." [Examines document.] Yes; it is still not in agreement, not yet agreed to. It is marked on the index "not yet agreed to."

Q. And on vacations the part dealing with the disqualification for vacations had not been agreed upon yet, had it?—A. No, sir. And I would like very much to answer that question fully, by reference to what Mr. Douty said yesterday.

Q. But that particular part for the disqualification—— A. No, sir; had not been agreed upon.

Q. Now, there was also a disagreement on the preamble.—A. Yes, sir. I think I understood there was a disagreement [239] on the preamble.

Q. With your letter of October 12, 1945, do you recall presenting in addition to Article 2, wage rates and work assignments, that section as not being in agreement then?—A. No, sir. This was handed to the Union and agreed to on November 7, 1945, in the Conciliation office.

* * *

[240] Examination by Trial Examiner ROGOSIN:

Q. Mr. Williams, reference has been made during cross and testimony to union security. Was there any detailed discussion of the nature of the union security involved, whether for closed shop, union shop or maintenance of membership?—A. Yes, sir. In early states—I should say at the very first conference, and I don't mean August 31 conference; I mean possibly September 12, 13 and 14 conferences, the Union started out by asking for closed shop, and indicated a willingness to settle for union shop. Along toward the end sometime—I am not sure when—I think on October 17, the Union indicated a willingness to accept a provision whereby all those who had, up to now, had joined the Union would be required to maintain membership in the Union as a condition of employment.

Q. Let me interrupt in the interest of brevity. Is it correct to state that the Company was opposed to union security in any of the forms proposed by the union?—A. Yes, sir.

Q. That you have just indicated?—A. Yes, sir.

Q. And was that decision or policy fixed before you approached your bargaining negotiations as early as August [241]

31, 1945?—A. Well, we entered into the bargaining negotiations with the intention of trying to talk that thing out and persuade the Union to our views and knew they would try to persuade us to their views. As the thing went along we became more convinced we would not give any sort of Union security.

Q. What was your position at the threshold of bargaining negotiations with respect to any form of union security?—A. Of course, they had given us their proposal ahead of August 31, and it concluded, if I remember it, "Union shop." I believe it was "Union shop." And we had naturally discussed their proposal in detail before we made our counterproposal of August 31 and had concluded that we would not accept their union security proposal. I should take it that that is a union shop proposal which they originally made to us.

Q. And that, as I understand it, was separate and apart from your position with respect to the check-off, upon which you apparently made some counterproposals on November 7 or 8 at the meeting with the Conciliator.—A. The Company was equally opposed itself to deducting the union dues. The Company was willing to try to find some way by which it could assist the Union in collecting its own dues. And that is why we made the proposal on November 7 and 8.

[242] Q. There has been some mention in the testimony and questions by Counsel about peg point rates.

* * *

A. The reference to peg point is as to the decision of the National War Labor Board in the Twenty-Three Cotton Textile Companies Case decision rendered on February 20, 1945. The Board set four or five rates which it denominated peg point rates and directed that other rates in the schedules of these companies be negotiated so as to harmonize with those peg point rates. And the Southern Textile Commission, set up pursuant to this order, thereafter established some thirty odd so-called peg point or guide rates. And it was intended that these decisions of the War Labor Board would furnish a pattern for the entire textile industry, whether parties to the case or not.

Q. Has the expression "guide rates" been used to denominate the same thing?—A. Guide rates and peg rates mean the same thing. If you think it will help the record at all, I will try to clean this. One of us can get a copy. I don't think it is material.

[243] Q. My purpose was to find out whether it had any materiality.—A. It is material only in that we did bargain with relation to it. We bargained with relation to its guide rates.

* * *

KENNETH DOUTY (recalled) (Board witness).

* * *

Direct examination by Mr PURDOM:

Q. Mr. Douty, you heard Mr. Williams' testimony?—A. Yes, sir.

Q. Are there any points pertaining to his testimony with which you do not agree?—A. Yes, sir.

Q. Tell us what those are.—A. There are three points that I would like to speak to. One is his analysis of our bargaining conferences, especially [244] the ones from October on, which, according to his analysis, were devoted almost entirely to the union security issue and nothing else.

I think the indications from the questions that I put to Mr. Williams concerning the subject matter of those conferences indicates that that is not so.

Our position at all times was that we were bargaining for a contract, that there were certain elements of a contract that we felt had to be covered by a contract. There had to be a clause on work assignment to protect people against stretchouts. There had to be a clause on wages and wage scale to provide adequate wages for the people involved. There had to be a suitable arbitration clause so that matters that couldn't be settled between the parties could be submitted to arbitration; and that some form of union security should be in a contract as a sign of good faith between the parties. And on that latter score, we pointed out, as we said, that what we were asking the Company to do in our final proposal to the Company and we went in an effort to attempt to meet the Company from a union shop proposal down to a proposal for checkoff; and that proposal was that if an employee for the life of the agreement wanted the Company to deduct his union dues, the Company would honor the wishes of the employees and do it.

Now we at no time stated that if we didn't get this [245] particular element of the contract that we would have no contract at all. As far as we were concerned, the matter was open for bargaining all along the way on the issues we hadn't arrived at. Similarly, we never said we would make employees like the point plan. We know that we nor nobody else can make the employees at the Crompton-Highland Mills like the point plan. The Company has tried it now for three or four years, and they certainly have not succeeded. The reasons they didn't succeed we pointed out in the negotiations: Many times we had examples of people who went from 65

looms to 98 looms and were getting less pay, of a nickel increase being put into effect and people earning less afterwards than before. So that throughout the negotiations, we discussed the point plan from the point of view of what it had meant to the workers, their earnings in the mill, and used in some cases the word "stretch-out" in discussing some of the sections that it had.

What we did do, however, was to say something like this: If we can work out a decent work load clause that will protect the workers in the plant from stretch-outs, then we can cooperate with the Company in any plan that the Company has, as long as we are sure that wages are not cutting workers, are not stretched out. And that was our position.

* * * *

[248] By Mr. PURDOM:

Q. I wish to ask a further question. Did you on December 19 say, as Mr. Williams stated: You would [249] not agree to any contract irrespective of all provisions that did not provide for union security and the collection of union dues?—A. No, sir. I don't believe that I ever made any statement which precluded the bargaining on the total issues that were involved in the dispute and were in dispute.

Mr. PURDOM. I wish for the court reporter to read back on Mr. Williams' testimony of a statement supposedly made at a previous conference.

* * *

The REPORTER (reading). "At the very outset of that bargaining conference, Mr. Douty told us that the Union will not ever sign any contract, irrespective of its other provisions, unless that contract includes provisions satisfactory to the Union for the security of the Union and the collection of its dues."

By Mr. PURDOM:

Q. Did you ever make any such statement as that?—A. No, sir.

Q. At any time?—A. At any time.

[250] Q. During any conference?—A. During any conference.

Q. You did or did not?—A. I did not.

Q. Are you sure?—A. I am positive.

* * *

[253] FRANK ETHRIDGE (Respondent's witness).

* * *

Direct examination by Mr. WILLIAMS:

* * *

Q. Where do you work, Mr. Ethridge?—A. Crompton-Highland Mills.

Q. In what capacity?—A. Personnel manager.

[254] Q. And have you, as personnel manager of the Company, and as Company representative, participated in all of the bargaining conferences between Crompton-Highland Mills and Textile Workers Union of America?—A. I have.

Q. Mr. Ethridge, were you in the bargaining conference which was held in Mr. Pickford's office on November 8, 1945?—A. I was.

Q. I go back first, please—I skipped my sequence. Were you in the bargaining conference held in Mr. Pickford's office October 18, 1945?—A. I was.

Q. How did that conference break up?—A. I believe that was the one where Mr. Douty said that if we could not come to any agreement on union security, there would be no use of further conference.

Now, I don't say that those are his words, but——

* * *

[225] By Mr. WILLIAMS:

Q. Did the Union or not withdraw from that conference, Mr. Ethridge?—A. The Union did withdraw.

Q. What statements were made at the time it withdrew?—A. That they saw no use of further negotiations if there could be no—if we couldn't come to any agreement as to union security.

Q. Were you present at the bargaining conference in Mr. Pickford's office on November 8, 1945?—A. I was.

Q. What, if any, statements did Mr. Douty make at that conference with respect to the point plan and union security?—A. He said that they had come into that conference with the intention of supporting and doing all they could to help put the point plan across. If the Company was not willing to give them union security, then he was going to withdraw all the aid he had offered and do everything he could to destroy and detract from the point system.

Q. At the conference on November 8, 1945, what, if any, statement did Mr. Douty make with respect to the entire contract and union security?—A. He said at that time that he wouldn't sign any contract, irrespective of other provisions, if it did not contain union security, or provisions for union security.

Q. Were you present at the bargaining conference held [256] at Mr. Pickford's office on December 19, 1945?—A. Yes, sir.

Q. What, if any, statement did Mr. Douty make with reference to the entire contract and union security at that time?—A. Well, practically the same thing he had made before.

Q. Repeat the gist of it, please, sir.—A. Well, that he was still not willing to sign a contract that did not have in it some provision for union security and that he saw no use for further negotiations as long as the Company took the stand they did about union security.

Q. Did the Union withdraw from the conferences on November 8 and December 19, 1945?—A. Yes, sir. They did on all three occasions.

Q. What, if anything, did Mr. Douty say as he left the conference on November 8, 1945 with respect to further conferences?—A. On November 8?

Q. Yes, sir. That is the conference that was held in Mr. Pickford's office after the conference with the Conciliation Service, in Atlanta.—A. I think that he said at that one—I don't remember whether this is the exact conference or not, whether it was the 8th or the 19th, that there was no use for the holding of further conferences so long as the Company took its stand about union security.

[257] Q. Did he make substantially that same statement in withdrawing from the conference on December 19?—A. Yes, sir.

Q. Did you, as a Company representative, understand on December 19 that all bargaining negotiations were over?—A. Yes, sir; I would have thought so.

Q. Did you think so?—A. Yes, sir.

Q. For what reason?—A. Well, by his own statement.

Q. By whose own statements?—A. By Mr. Douty's own statement; there was nothing else you could.

* * *

By Mr. WILLIAMS:

Q. Mr. Ethridge, you were present yesterday when Mr. Hozy Corley testified as to a conversation he had with you on October 19?—A. Yes, sir.

Q. Will you state your recollection of that conversation, please, sir?—A. I will be glad to.

I didn't remember the occasion for Hozy being in my office. Maybe it was the Community Fund business; I don't know about that. But some way or other, or for some reason or other, he was in there, and we got to talking about the Union contract and Union negotiations, and it did—the discussion [258]

got to where I think I said—I am sure that I said, that it seemed to me the Union had quit negotiating for the people and had gone to negotiating for their own good. And I had a perfect right to think so because, as it was the 18th, it was the day before that negotiations had broken up; and on that day I remember especially, in the arbitration clause that we got to the place where we were going to select the arbitrator and Mr. Douty said that he couldn't agree to that, to selecting the arbitrator unless he knew what stand the Company was going to take on union security.

Now it seems to me if negotiations had been going to break up because we couldn't agree on arbitration, they would have broken up——

* * *

Trial Examiner ROGOSIN. It is not clear whether what you are now testifying about is what you said to Hozy Corley in the conversation with him.

The WITNESS. I did say this very thing, sir.

Trial Examiner ROGOSIN. What you have been testifying to is what you stated?

The WITNESS. Is the reason that I said what I did, [259] that Douty had quit negotiating for the people and had gone to negotiating for the Union.

Trial Examiner ROGOSIN. Did you state that reason to Corley, or is that what you are now stating?

The WITNESS. I stated the reason to Corley; yes, sir.

Trial Examiner ROGOSIN. Very well.

A. (Continuing.) And that when this happened, as I say, the negotiations didn't break up because we couldn't agree on arbitration, but when we couldn't agree on union security, they did break up.

And Hozy said, well, he didn't think that the Union had failed to negotiate for them. And during the conversation somewhere, I said that I didn't blame Mr. Douty for trying to secure himself or secure the dues, that I felt like the people at Highland Mill were due them, or some remuneration for their services—they had asked them to come down there and they were certainly due to pay them.

I said, "If Douty comes down here and signs a contract without Union security, and they have spent a lot of month here, and in a year's time, or two years' time, it winds up and he has lost money. And he signs a contract at Dundee and they lose money; and they sign one at Thomaston Cotton Mills, and they lose money, and keep that on, that Douty will suffer a decrease in salary or lose his job. And by the same token, if he signs here at Highland Mill and makes [260] money and

at Thomaston and Dundee and makes money, he more than likely would, and certainly should, get an increase in salary.

That was the conversation that we had that day in whole, and was only quoted a part of it, by Mr. Corley.

By Mr. WILLIAMS:

Q. Mr. Ethridge, your purpose was to explain to Mr. Corley that you understood Mr. Douty's position in the matter?—A. That's right, sir.

Q. And that is the only purpose you had in making the comments regarding his possible loss of job or income——A. Yes.

Q. (Continuing.) If he kept making contracts and not collecting dues?—A. I did not make the statement that if he didn't get union security at Highland Mill, that he would get a decrease in salary, and if he got union security he would get an increase in salary. I made that, if he got several contracts, or a number of contracts with union security, he should, and more than likely would, get an increase.

Cross-examination by Mr. PURDOM:

Q. Did you say that you felt that Mr. Douty got so much for every mill he organized?—A. No, sir.

[261] Q. And that he had to have either union security or 5 cents an hour to break even?—A. No, sir; I did not say that.

Q. Mr. Corley is the chairman of the local committee?—A. So they tell me.

Q. And works in your mill?—A. He works in the mill.

Q. Mr. Douty doesn't work in the mill, does he?—A. No, sir.

Q. He is the representative of the Union, isn't he?—A. Yes, sir.

Q. Now, you by any chance were not trying to create friction were you, between the local and its representative?—A. No, sir.

Q. You had figured out, though, that if the Company was adamant on its position and didn't grant union security and all the other mills that jointly raised wages together cooperated that the union was going to have a pretty tough time, didn't you?—A. Well, you will have to speak in a little smaller words. I can't follow those "adamants" and all like that. As I told you a while ago I am from Milner, and we don't know too much about those big words. But I only put Douty's job like I would mine or yours or Mr. Pickford's. And I think in that conversation I referred to Mr. Pickford's. [262] That if he consistently ran the mill losing money, he would get a decrease in salary, and if he consistently made money, he would get an increase in salary. And if you consistently represent somebody and

lose cases, you will lose your job. And if you consistently win, then you will keep your job. And the same thing applies to me or Mr. Douty or Mrs. Kanun or anybody else.

Q. So one thing would be to do everything you could to keep them from getting union security?—A. That is your idea; not mine.

Q. It would be a good way, wouldn't it?—A. I didn't say that; no, sir.

Q. Now, let's see. Let's go back a minute. We talked about October 18. Did you agree on everything but union security at that time?—A. No, sir; we couldn't.

Q. Oh, there were other thing in dispute?—A. Yes, sir. As I told you, arbitration came up and he said he couldn't agree with that until he knew what stand the Company was going to take on union security.

Q. How about wages? Did you agree on wages?—A. No, sir.

Q. How about work assignments? Had an agreement been reached on that?—A. No, sir.

[263] Q. At that time the Company said it was not going to give any increase in wages at all, didn't it?—A. That's right.

Q. What?—A. That's right.

Q. Couldn't they break up a conference with that just as easy as the Union's position on union security?—A. Well, that is a matter of opinion.

Q. Uh huh, and it depends on whose side you are looking at it from what you might say broke up the conference?—A. It still depends on who broke it up. We didn't.

Q. You didn't agree to any wage increase.—A. I say, we didn't break it up.

Q. You didn't agree to any wage increase proposal, did you?—A. No, sir.

Q. None. You didn't offer any wage increase proposal in lieu of union security check-off, did you?—A. A wage increase in lieu of——

Q. Union security or check-off.—A. No, sir.

Q. You don't know whether or not Mr. Douty would have accepted that or not, do you?—A. No, sir; I don't.

Q. You don't know whether or not, if you had agreed to [264] his wage proposals, that they presented, they would have then waived union security, do you?—A. Well, by the same toke', if we go offering him a wage increase to——

Q. Well, answer my question.—A. (Continuing.) To repeal his demands for union security, we might as well offer you $50 not to ask me these questions. We would just buy you instead of buying him.

Q. You were bargaining on a complete contract, weren't you?—A. Except that it looked like we would never get to one.

* * *

By Mr. PURDOM:

Q. Union security was in the contract, wasn't it?—A. He had asked for it.

Q. And wages were under discussion, weren't they?—A. Yes, sir.

Q. Well, if you give a point and they give a point, or if you do or they don't that is part of bargaining, isn't it?—A. Yes; but they were asking for both of them. We wasn't asking for either one of them.

Q. Yes. You were satisfied and set in both of your positions. You weren't going to give either wages or union [265] security, were you?—A. I think they were also set, and I don't think you could say either one of us—they said they were going to have an increase and union security. They were just as—I believe you said—adamant—and was that a good word or not?—in opposition as we were. I don't think you could say either one of them——

Q. In fact, you knew both of you still had a chance of reaching agreements, because you met after that time, didn't you?—A. I would say that it was a case, possibly, of two hard heads getting together.

Q. And you are planning to meet again in the future, probably, aren't you, with the same union?—A. Yes, sir; we plan to meet with them again.

Q. So your hadn't agreed either then at that time on an arbitration clause, had you?—A. No, sir.

Q. And on vacation?—A. No, sir. I thought we made a very generous proposal on those, though.

Q. And as a matter of fact, at the end of the December 19 conference, these same issues still hadn't been reached an agreement on, had they?—[266] A. No, sir; they hadn't been agreed. And might I say why?

* * *

By Mr. PURDOM:

Q. And these issues were discussed at each and every one of your meetings from October 18 through December 19?—A. I wouldn't say they were all discussed at all the meetings, but they were discussed from time to time.

Q. Wages were discussed on the 19th, weren't they?—A. December 19?

Q. December 19.—A. Of that I am not too sure.

Q. About work assignments?—A. Yes; work assignments were discussed. There was a work proposal offered on the work assignments.

[267] Q. How about arbitration?—A. Well, the work load and work assignment clause has got provisions for arbitration in it.

Q. How about vacation?—A. On that day I don't think so.

Q. Now, let's go back. Were wages discussed on December 19?—A. I think. I wouldn't swear they were or were not.

Q. Yet you remember Mr. Douty's exact words on this union security, but are not sure whether or not wages were discussed?—A. I did not say they were his exact words.

Q. Well, the substance.—A. Yes; I remember the substance.

* * *

[270] Q. On January 1, did you go to see Mr. Corley?—A. Yes, sir.

Q. In 1946?—A. Yes, sir.

Q. Did you tell him when you got there that you were going to give them a raise?—A. I don't know whether I told him that or not. I wouldn't say I did or didn't. I honestly don't remember. I told him to come to the office.

Q. When you went there, you knew the mill was going to grant a raise, didn't you?—A. Yes, sir.

Q. And you told him to get the other members on his committee together, didn't you?—A. Yes, sir.

Q. Now, you knew how much the raise was going to be, didn't [271] you?—A. Not in every instance. I knew approximately what it would be.

Q. It had already been typed up, hadn't it?—A. I assume that it had.

Q. It had already been decided?—A. I assume that was.

Q. And the only thing to do was to put it into effect, and you decided to put it into effect as of December 31?—A. Yes, sir.

Q. You wanted the committee over there so you could tell them what the Company had decided to do, didn't you?—A. Yes, sir.

* * *

[274] RE-CROSS-EXAMINATION

* * *

Q. Now, you were in on these negotiations from the first, weren't you?—A. Yes, sir.

Q. The Company's position at the first meeting was that they weren't going to give union security, wasn't it?—A. No, sir; I wouldn't say that. I wouldn't say that. Their position at their first meeting was that they would not give a union shop, and that was a demand made in the union's proposal.

Q. And then when the Union proposed union security and check-off, they said they weren't going to give that?—A. That was quite a bit later on, though.

Q. In fact, the Company never did——A. Never did.

Q. (Continuing.) Agree to any type of union security?—[275] A. I might tell you now——

Q. Did it? Did the Company ever agree to any type of union security and check-off?—A. No, sir; never did.

Q. Never did?—A. No, sir.

Q. And they never agreed to a wage raise at all until December 19, when 10 cents or two five-cent increases would be incorporated in the base?—A. Or in the incentive system; yes, sir.

Q. In the incentive system?—A. Yes, sir.

Q. And you wouldn't want to try to create the impression that the only disagreement was on union security, would you?—A. I don't say that was the only disagreement. I said they all led back to that.

Q. That is your opinion, isn't it?—A. Yes, sir; that is my opinion.

Q. And you don't know what would have happened if the Company had met the Union's wage proposal, do you, or union security?—A. No, sir. Neither do I know what would have happened if the Union had withdrawn their union security clause.

Q. So the only thing that you can testify to is that under the proposals and counter proposals, the Union did not [276] withdraw its demand for union security, is that right?—A. That's right, sir.

Q. And the Union did not withdraw its proposal for higher wages; and the Company did not accept it.—A. That's right, sir.

Q. And on arbitration an agreement hadn't been reached on one point there.—A. That's right, sir.

Q. And several other aspects. And of course you or I or no one else knows what might have been reached in the form of an agreement if somebody had given on some of the points in controversy that they didn't give on, do we?—A. Somebody would have had to have given. We were in a deadlock there.

Q. To reach an agreement somewhere on some of these points.—A. That's right.

Q. And if the Company had given on one, you don't know whether the Union might or might not have given on one; or, if the Union had given on one, you can't categorically say you might or might not have given on one.—A. I don't know what "categorically" means. But I think I can say 'no' on that.

Trial examiner ROGOSIN. Do not make a guess.

The WITNESS. It would be a guess.

[277] By Mr. PERDOM:

Q. You couldn't say whether you would or would not.—A. No; I couldn't say that.

Q. The only thing you know is, as a matter of fact, they didn't reach an agreement on the proposals and counter proposals.—A. I do know they didn't reach an agreement.

Q. You do know they didn't reach an agreement. And like you and I trying to trade for this watch, if we don't agree today, we don't know what we might do tomorrow, do we. If you make a different offer or something of that nature, we might trade tomorrow, mightn't we?—A. That is true. We might trade tomorrow, but if we were trading watches and—or trying to trade watches, and you walked off this afternoon and said, "Ah, Frank, if that is the way you feel about it, there is no use trying to trade watches," I wouldn't think of making a proposition on that watch.

Q. But it might be still possible to trade if you made me a good enough proposition?—A. I would say nothing is impossible.

Q. And you can only judge a situation on what actually occurred, can't you, at that time?—A. Yes, sir.

* * *

[280] Examination by Trial Examiner ROGOSIN:

Q. Was there ever any counter proposal made by the Company with respect to the union security in any form?—A. Nothing except the ways to assist the union in collecting their dues.

Q. Well, that dealt with check-off, did it not?—A. Yes, sir.

Q. I am speaking now in terms of union security itself.—A. No, sir; there was none.

Q. Was this wage increase that was finally put into effect on the first of January of 1946 ever communicated to the union prior to the time it was posted?—A. No, sir.

* * *

HERBERT A. PICKFORD (Respondent's witness).

* * *

DIRECT EXAMINATION

* * *

[281] Q. Where do you work?—A. Crompton-Highland Mills.

Q. What is your job?—A. Manager.

Q. How long have you been manager of Crompton-Highland Mills?—A. Almost three years.

Q. Did you participate, as manager of Crompton-Highland Mills, and as the managerial representative, in all of the bargaining negotiations between Crompton-Highland Mills and Textile Workers Union of America?—A. I did.

Q. Were you present at the bargaining conference which was held on October 18, 1945?—A. I was.

Q. What precipitated the conclusion of that conference?—A. Mr. Douty stating—I forget the exact words—but stating that the Union could not—he could not, for the Union, agree to any contract that did not have a union security clause in it.

Q. What did he say with respect to further negotiations at that time?—[282] A. He intimated that inasmuch as we could not get together on union security, that further negotiations were off.

Q. Did we discuss that matter among ourselves afterwards?—A. We did. We thought that it was more or less of a means of bargaining strategy on the part of Mr. Douty in bringing the meeting to such a conclusion.

Q. Were you present at the bargaining conference of November 8, 1945?—A. I was.

Q. What, if anything, did Mr. Douty say at that time with respect to his willingness to agree to a contract which did not include provisions for union security?—A. Mr. Douty stated—I forget his exact words—that he could not agree to any contract that did not have a union security clause in it.

He further stated that the union—he and the union, with a union security clause, would help in whatever way possible to make a success of our point plan. But without union security, he could not do so. As a matter of fact, he further said that he would do everything possible to discredit it—in not the exact words, but words to that effect.

Q. Mr. Pickford, were you present at the bargaining conference on December 19, 1945?—A. I was.

Q. In your office?—[283] A. That's right.

Q. What, if anything, did Mr. Douty say with respect to a contract and union security at that time?—A. Well, again a reiteration of his statements on October 18 and November 8, the fact that he could not agree to a contract that did not have union security provisions.

Q. Did he make any comment regarding other provisions of the contract?—A. He indicated that he could not close out any part of a contract without a union security clause.

Q. What did Mr. Douty say on November 8 and November

19 with respect to further conferences? Take the 8th, first, please.—A. That further conferences were off.

Q. Were off?—A. He walked out—he and his bargaining group walked out of the conference on that date after having made the statement that he would not agree to any contract that did not have a union security clause.

Q. And did he then state that further conferences were off?—A. He did.

Q. Did he walk out of the meeting on December 19?—A. He did.

Q. What did he say as he left that meeting with respect [284] to further conferences?—A. That——

Q. I meant December 19 if I said November 19.—A. That he did not see any further need of getting together.

Q. Did we consider that the conferences or negotiations had ended with December 19 meeting?—A. We did.

Q. Mr. Pickford, explain why you made the wage increase on January 1, 1946.—A. We had heard the end of the previous week that numerous mills throughout the state had made wage adjustments, and we heard through rumor, more or less through the grape vine, that local mills were planning to make wage adjustments. I checked into that rumor with various mills and found that wage adjustments were going to be made, although I didn't get any specific dates as to when they would be made.

We had steadfastly said throughout our bargaining conferences that if and when wage increases in our area were made, we would be amongst the first, as we had always been, to make such increases. And when we heard that wage increases were to take place, we wanted to maintain our position as being amongst the first to make the increase and also maintain our position in the local labor market by making an increase ourselves.

Q. Do you know, Mr. Pickford, what wage increases were [285] made by any of the other mills in Griffin?—A. I do not know the definite figures aside from what I saw in the paper.

Q. Did you join with any mills in making any announcement about a wage increase?—A. No; we did not. We made our announcement independently of anyone else, as we have always done.

Q. Did you authorize any joint statement in a paper?—A. No; we did not. I would like to mention for a moment, if I may, that statement in the paper. Mr. Quimby, Melton Quimby, Jr., called me a day or so after the announcement had been made and told me that word had come to him that there had been a wage increase. I told him that there had been.

Q. You said a day before the announcement had been made. What announcement did you refer to?—A. The announcement of the wage adjustment in our mill.

Q. The announcement made to your employees, to the union?—A. That's right.

Trial Examiner ROGOSIN. Who was the man who called you?

The WITNESS. Mr. Quimby, Melton, Jr., who is the editor of the local paper. And told me he had heard news of the increase and asked me for any details I might give him. And I told him roughly what had been done: We had made wage adjustments that would attempt to approximate figures——

By Mr. WILLIAMS:

Q. When you asked the committee to come [286] into your office on the afternoon of January 1, what did you do after the committee got there?—A. After the committee got there, I presented Mr. Corley, Mr. Hozy Corley, with a copy of a letter that I had written but had not sent at the time to Mr. Douty, and also copies of the wage adjustments that were to be made throughout the mill.

After handing the copy of the letter to Mr. Corley, together with the wage adjustments, I read the letter and asked the group to look over the rates. And Mr. Corley passed out the rates, and Mr. Gidden looked over the spinning room with a comment or two on it.

After they had looked them over, I asked if there were any questions on it. I think Mr. Gidden had one question—I forget what it was—that we quicky explained.

I told the committee that during the course of the meeting that announcements would be put on the bulletin boards with the figures that I had presented or given to the committee. The committee as a whole expressed themselves as being very much pleased with the wage adjustments, and two members specifically thanked me and asked me to thank the Company for the wage increase, as it would be very much appreciated; as I know it was.

Q. Mr. Pickford, did it occur to you that the Union or anyone else might object to the employees' getting a wage [287] increase?—A. Mr. Williams, it did, but I thought we were faced with two plans of procedure. The first, to get in touch with Mr. Douty or Mrs. Kanun and endeavor, through the wage adjustment, to close our contract, close contract negotiations; but remembering Mr. Douty's repeated statements that he could not agree to a contract that did no have union security provisions in it, we saw nothing else to do but to adopt the second clause, which was to make the announcement, and thought it best to make the announcement direct through the

organizing committee, which, on numerous occasions, Mr. Douty had referred to as the "Union."

Q. Mr. Pickford, if the union or the committee had objected to the wage increase, would you have made it anyway?—A. I think, Mr. Williams, that we would have. As a matter of fact, I know; not think; we would have discussed their objections with him, but the wage adjustment would have been made.

Q. There was no occasion for discussion because there were no objections offered?—A. No objections, and it seemed to be very well received.

Mr. WILLIAMS. The witness is with you.

Cross-examination by Mr. PURDOM:

Q. During your bargaining negotiations, did you ever offer to the Union the wage rates that you put [288] into effect on January 1, 1946?—A. No; we did not.

Q. Did you ever offer any wage rates substantially equal to those you put in effect on January 1, 1946?—A. No, sir; we did not.

Q. So then you are speculating on hypotheses as to whether or not you might have been able to close out a contract on January 1, if they had been offered at that time to the Union, aren't you?—A. Repeat the question, please.

Q. You are speculating on hypotheses that did not arise as to whether or not you could have closed out a contract then?—A. Well, after Mr. Douty's repeated statements on union security, I did not feel that he would sign any contract that did not have a union security clause in it.

* * *

Q. You had not offered this wage increase that you put in effect on January in lieu of union security, had you?—A. No; we had not.

Q. Now, when did you and these other mills get together [289] on this raise business?—A. We did not get together on the raise, Mr. Purdom.

Q. Well, you said you checked. With whom did you check?—A. I checked with mill officials to verify the rumors that I had heard, that they were going to put a wage adjustment into effect.

Q. You communicated with them about it, didn't you?—A. I did. As a matter of fact, I told our committee that I understood local mills were going to make an adjustment.

Q. You said you wanted to keep yourself substantially in line with others. You found out how much the others were going to raise theirs, didn't you?—A. No; we did not.

Q. How did you know yours would be equal to theirs?—

A. We thought in making an adjustment ours would be well up to, or possibly better than, other mills.

* * *

[292] Q. Now, don't you know further that the average production per worker in your mill is not 80 points per hour?

* * *

A. I would like to say this: that we have four departments where the point plan has been pretty well established. In those four departments the average is about a 78-point hour.

* * *

[299] Q. Now, did Mr. Merryman or Mr. Richmond approve this increase before it was put into effect?—A. Both Mr. Merryman and Mr. Richmond knew of the wage adjustment; yes.

Q. Did they approve it?—[300] A. Yes, they did.

Q. When did they approve it?—A. Oh, I forget the exact date; either the 31st or the 1st.

Q. Did they approve it before or after the committee was in your office?—A. Before.

Q. And they knew it was going into effect?—A. They did.

Q. Before you had the committee in your office?—A. They knew that I was going to take it up with the committee.

Q. And knew you were going to put it into effect as of December 31, 1945?—A. Correct.

Q. Isn't that right?—A. Correct.

Q. And you and Merryman, all of you knew that during the bargaining negotiations, you had not submitted those proposed increases to the union?—A. They did, but there had been no occasion for it.

Trial Examiner ROGOSIN. That isn't the question.

* * *

[301] A. Possibly no; we hadn't even discussed them; there had been no occasion.

* * *

[303] Q. Work assignments must conform to the point standards; is that correct?—A. It must; right.

Q. And if point standards change, or if the operation is one on which the point standards are different from the last preceding operation that was worked on the stand of looms, there must be a change in work assignments?—A. There should be; yes. Any variation in value of the points.

Q. Mr. Pickford, is there anything you would like to add with respect to the operation of the point plan, to what you heard me testify to at length this morning?

* * *

[304] A. I would like to try to, if I can, outline what is followed. Our engineers make a study, a detailed time study, of the motions and frequencies with which the motions in a job occur. And from the figures that they get, the times that they get, they derive, after adding ample allowances for fatigue and delay and personal time, they allow sufficient—allow percentages to arrive at total time to be allowed for [305] each motion. Time taken for each motion is usually in terms of the engineer's use of normal seconds. Frankly, I can't describe a normal second, but that is the term they use, a normal second. And from those times they arrive at point values. A point as is mentioned here several times is the amount of work that can be done by the average normal worker working, say, with ample allowances for fatigue and so forth, at nonincentive speed. After the values of the—or after the point standards have been arrived at, the points allowed for each motion, through evaluation the rate of pay that would be paid at a 60-point hour is determined through close evaluation, taking into consideration physical effort and skill and knowledge and so forth. And the 60-point hour is divided into that rate, that evaluated rate, and the resulting figure becomes the rate per point of the hundred points.

For example, if a job is evaluated at, say, 54 cents per hour, 60-point hour, 60 is divided into 54; the resulting figure, 0.009. 0.009 is the rate per 100 points, and that rate holds for all production that is turned out in a given operation.

Each day production on a given job or given jobs in the mill are converted to points in our pay roll department or standard department, and those points are modified by the rate per hundred points to arrive at a day's pay.

[306] Trial Examiner ROGOSIN. You have to assume on that basis that you are working on a 60-point hour, don't you?

The WITNESS. Not necessarily; no.

Trial Examiner ROGOSIN. Would the same hold true if you were on a 75 or 80?

The WITNESS. 75-point hour would pay more money at a standard rate. The rate itself does not change. The rate is guaranteed against change unless there is an increase or decrease in rates generally.

Examination by Trial Examiner ROGOSIN:

Q. What is the purpose of using these various sliding point per hour scales?—A. An 80-point hour is the point hour that is expected of a qualified and diligent worker.

Q. Which would mean one and a fraction.—A. One and one-third.

Q. Or 1 and ½. Doesn't it necessarily follow from that that if a person is required to do 1½ operations in one second——A. It is not in a second, though.

Q. In one minute, that he is doing substantially more than he would if he were doing——A. In proving——

Q. If you would just let me finish so I can carry through my own thought to see where I am going.

[307] Assuming he is required to do 1½ operations, motions, or occurrences, whatever you call it, in a minute, as against performing one operation in a minute, he is doing a substantially greater amount of work, isn't he?—A. Generally proven, or has been proven that a person operating under incentive conditions, or working under incentive performance, will produce ½ more than a person not on incentive.

Q. Well, you say he would be compensated by correspondingly greater amount of effort.—A. That's right.

Q. Because in that case you would be multiplying 80 by the point.—A. You get 100 percent rate in other words.

Q. Anything further you want to say about this point system?

Redirect examination (continued) by Mr. Williams:

Q. Mr. Pickford, let me ask you a question.

The Examiner used the phrase "sliding scale" on point hours. Is there any such thing as a sliding scale on point hours?—A. No. I should have questioned that.

Q. What does an 80-point hour mean?—A. An 80-point hour is amount of work produced by an average——

[308] Q. When we say a man did an 80-point hour of work, what do we mean?—A. He produced 80 points of work.

Q. Seventy?—A. He produced 70 points of work.

Q. Seventy-five?—A. He produced 75 points of work.

Q. And if he did a 60-point hour, he produced 60 points of work?—A. He produced 60 points of work.

Q. And he gets the same rate whether he gets 60, 70, 75 or 80; is that true?—A. That is correct.

Q. It is not a sliding scale; it is simply a measure of the amount of work you did?—A. A measure of amount of work for which he is paid a fixed rate.

Trial Examiner Rodgers. In order to determine whether the 0.0079, or whatever the point evaluation is—in order to determine whether that is a fair or equitable evaluation, wouldn't you have to have some basis for determining the amount of work that was involved in a given hour, in order to determine the hourly earnings of an employee?

The Witness. The amount of work that is to be produced is determined through time study.

[309] Re-cross-examination by Mr. PURDOM:

Q. Mr. Pickford, if you put an increase in on the 80-point hour it would be less—a 10-cent increase put in on an 80-point hour would be less of an increase than if put in on a 60-point hour base, would it not?—A. Yes, it would. We put in our last increase at a 60-point hour.

Trial Examiner ROGOSIN. 60 or 67?

The WITNESS. At 60.

Trial Examiner ROGOSIN. I heard the figure 67 somewhere.

Mr. WILLIAMS. You probably heard me say that we told the Union on December 19 we proposed to put the 10 cents in at 67, but we actually put it in on December 31 at 60.

By Mr. PURDOM:

Q. So there is that marked distinction between 80, 70, 60, 50, and 100, isn't there, as to where you put the increase in, as to the actual amount of return it is going to mean to the worker?—A. Yes. Of course, you would never put one in at 100.

Q. That is what you did, wasn't it?—A. When?

Q. The one on January 1 on the basis of 100 points?—A. We put it in at a 60-point hour.

Q. January 1, 1946?—A. December 31, 1945.

Q. You put it in where?—[310] A. At a 60-point hour.

Q. Look at your schedule and see if it doesn't show it at 100, being put in?—A. Shows it in terms of rates per 100 points.

Q. But you put it in on a 60-point base?—A. Correct.

Q. That is where all your other raises, from time to time, have been put in, haven't they?—A. On the contrary, we haven't had any previous raises that affected our standards up until this time.

Q. And under your Stevens plan, 60 is where they would go in, isn't it?—A. Not necessarily, no.

Q. Now, this notice would not be as great an increase on a 60-point as it shows on 75 or 80, would it?

Trial Examiner ROGOSIN. Will you identify the exhibit?

Mr. PURDOM. This is January 1 notice.

Mr. WILLIAMS. 12–A.

Mr. PURDOM. 12–A?

Mr. WILLIAMS. Yes, sir.

By Mr. PURDOM:

Q. Board's Exhibit 12–A on the card room. It shows an increase there of 5 at 75 and 6 at 80. So at your base of 60 the increase would be less than that, wouldn't it?—A. Naturally, that is where it is put at.

[311] Q. What would it be at 60?—A. In that particular case?

Q. Yes.—A. 12 cents.

Q. Twelve?—A. We put in the two 5-cent increases that we had previously not been allowed to put in, plus two additional cents, which amounted to four cents at 70-point hour, five cents at 75 and six cents at 80.

Q. What would it amount to at a 60-point hour?—A. Twelve cents put in.

Q. No, because you have five here at 75.—A. Well, actually at 60 it amounted to 2 cents more.

Q. Yes. That is the increase put in on January 1.—A. If your mathematics is good, you can check it at 65, 70, 75, and 80. If not we will help you.

Q. Oh, there is one more thing. I want to get this cleared up. You mention in changing from 32 to 36 there, that a change in job specification might result in the change from 32 to 36 looms.

What is a job specification and how would that affect it?—A. Well, it may be a change in the job that would require much more patrolling, much more attention on the job; much more patrolling time would make for an increase in work per [312] loom or per spinning frame or per card and naturally change the work assignment.

* * * *

Q. You made a proposal on rates, didn't you?—A. I wouldn't term it a proposal, no.

Q. What was it?—A. Mrs. Kanun asked for a rate schedule, and we gave it to her. And when she got the rate schedule, she and the Union refused—neither one of them would look at it, neither Mrs. Kanun or Mr. Douty.

Q. Well, now, what were you explaining on wages then on October 18 if it was not this wage proposal?—A. We were giving Mrs. Kanun the prevailing rates at that time on diffetent jobs.

[313] Q. And then on December 19 you made a wage proposal of putting the two 5-cent increases into the base; didn't you?—A. At a 67-point hour.

Q. According to your testimony; at 67. Well, that was a wage proposal, wasn't it?—A. Yes.

Q. You wanted the Union to accept it; didn't you?—A. Yes.

Q. And you wanted it done then?—A. If they were agreeable to it, we would have done it then, yes.

Q. Now, is the Company willing to bargain with the Union at the present time?—A. We are, yes.

Q. Well, now, isn't that inconsistent with your position that they no longer represent any employees because of their action?—A. Mr. Douty has expressed a willingness to bargain; we are willing to bargain.

Q. Well, then, this is more or less a sham defense you raise here on this security business, isn't it?—A. No; it is not.

Q. You mean you will bargain and enter into a contract and agreement with someone who has forfeited his right to represent your employees?—[314] A. Mr. Douty——

Q. Answer my question, please, sir.—A. I say, if Mr. Douty is willing to bargain, willing to negotiate again, we are ready.

Q. Well, how did he unforfeit himself then?—A. Through his stating that he was ready to bargain.

* * * *

Examination by Trial Examiner ROGOSIN:

Q. Did the wage increase which became effective as of December 31, 1945, apply only to the employees on the incentive or point plan?—A. It applied to everyone except scrubbers, sweepers and outside labor.

Q. Then I assume from that that it included employees who were not then engaged under the incentive plan or point plan?—A. It did apply to them, yes.

Q. And how was the wage increase determined with respect to those employees?—A. All the day workers were paid at the rate of four cents an hour; their pay was increased at the rate of four cents an hour.

Q. They were given a flat four-cent-an-hour increase?—A. That's right.

* * *

[319] HOZY D. CORLEY (recalled) (Board witness).

* * * *

DIRECT EXAMINATION

* * *

Q. Did you attend all of the bargaining negotiation meetings?—A. Yes, sir; every one of them.

Q. Did you hear on December 19 Mr. Douty make this statement here as quoted or in substance that he would not agree to any contract irrespective of other provisions that did not provide for union security and the collection of union dues?—[320] A. No, sir; he did not make that statement.

Q. Did you hear him make that or a similar statement at any bargaining meeting?—A. No, sir.

Q. Or at any bargaining meeting did you hear him say in substance or directly that he would not sign any contract that did not have provision for union security in it?—A. No, sir.

Q. Were you present in the Conciliation Office in Atlanta—on what date was that?—A. I just forget.

Trial Examiner ROGOSIN. November 7.

Mr. PURDOM. November 7?

Mr. WILLIAMS. November 7.

By Mr. PURDOM:

Q. Did you hear Mr. Merryman say anything at that time?—A. Yes, sir. Mr. Douty asked him why was his excuse—reason for not giving us union security and a five-cent raise, and he said, well, he just didn't know, but he said his answer was "no," and it was "no" now, and it would always be "no," just as plain as he could speak.

Q. Did you get the impression from these bargaining meetings that the Union would not sign any contract that did not have provision for the union security in it?—A. No, sir.

[321] Q. Of course the Union, throughout the negotiations, wanted union security and was insisting on it?—A. Yes.

Q. The Union wanted a wage increase and was insisting on it?—A. Yes, sir.

Q. The Company wouldn't give either one and was insisting on its point?—A. They never did even talk about the increase. They would get to that; they would say they just was not going to do it; that was final.

Q. Until December 19, they wouldn't give any wage concession of any nature, would they?—A. No, sir.

Mr. PURDOM. That is all.

Cross-examination by Mr. WILLIAMS:

Q. Mr. Corley, you are convinced that the Company will not contract for any sort of union security and that the Company will not undertake to collect the union's dues for it, are you not?—A. I feel that way about it now.

Q. Do you still think we might make a contract in spite of that?—A. Well, I think so. We could get some counterproposals on it or something like that.

[322] Q. Do you think we have a chance of making a contract, well knowing the Company will not grant union security and the Company will not collect union dues?—A. Yes, sir. I feel we can get together if they will give us something to offset it.

Q. All right.

Mr. WILLIAMS. May I state in open court, we will be glad to resume bargaining on that basis at any time.

* * *

WILLIAM JUDSON MOORE (Board witness).

* * *

DIRECT EXAMINATION

* * *

Q. Where do you work?—A. Highland Crompton Mills.

Q. What is your job?—[323] A. Weaver.

Q. Are you on the Union negotiating committee?—A. Yes, sir.

Q. Did you attend all of its sessions?—A. Yes, sir.

Q. At any of those sessions did you hear Mr. Douty say, in substance, these words, or directly, that he would not agree to any contract, irrespective of other provisions, that did not provide for union security and the collection of union dues?—A. I did not.

Q. Did you hear him say at any of these meetings that he would not sign any contract that did not have provisions for union security in it?—A. I did not.

Q. Or words to that effect?—A. I did not.

Mr. PURDOM. That is all.

CROSS-EXAMINATION

* * *

[324] By Mr. WILLIAMS:

Q. Mr. Moore, are you willing to resume [325] bargaining negotiations as a member of the bargaining committee, well knowing that the Company will not grant any sort of union security and will not agree to collect the Union's dues for it?—A. I think, Mr. Williams, there is a possibility of the Company and the Union reaching an agreeable contract without union security. I think there is a possibility of that.

Q. Mr. Moore, I want to ask your one other question. Did you hear Mr. Douty say at a bargaining conference that the Union was prepared to support the point plan and would support the point plan if we gave them union security, but would not support the point plan if we did not give them union security?—A. I remember this being said: that the union would go in the mill, if you would give us union security, and encourage the people to learn the point plan and try—I did not hear any statement as to the union or the union committee going in and making them like it. I think that is impossible.

Q. You do remember Mr. Douty told us if we would give you union security, the Union would go into the mill and try to make the people like—what did you say, to——

Trial Examiner ROGOSIN. Encourage.

The WITNESS. Encourage.

Q. (Continuing.) Encourage the people to like the point [326] plan; you did hear that proposition?—A. That is true.

* * *

MARCUS LEE CRAWLEY (Recalled) (Board witness).

* * *

DIRECT EXAMINATION

* * *

By Mr. PURDOM:

Q. Mr. Crawley, on December 19, did you hear Mr. Douty say directly or in substance that the Union would not agree to any contract irrespective of other provisions, if it did not provide for union security and the collection of union dues?—[327] A. No, sir.

Q. Did you hear him say at any meeting that they would not sign any contract that did not have provision for union security in it?—A. No, sir.

Q. Did you hear Mr. Merryman talk in the Conciliation Office?—A. Yes, sir.

Q. What did he say?—A. Well, he just said if we were asking for a five-cent raise and union security, the answer was "no" now and never.

Mr. PURDOM. That is all.

Cross-examination by Mr. WILLIAMS:

Q. Mr. Crawley, are you convinced that the Company will not agree to any inclusion in the contract of union security and the Company will not attempt to collect the union's dues for it?—A. Sir, I didn't understand.

Q. What?—A. I didn't understand all you said.

Q. I say, are you now convinced that the Company will not agree to contract for any sort of union security and that the Company will not agree to collect the Union's dues for it?—[328] A. Yes.

* * *

By Mr. WILLIAMS:

Q. Mr. Crawley, are you, as a member of the bargaining committee of the union, willing to resume bargaining negotiations, well knowing that the Company will not agree to any kind of union security and will not collect the Union's dues for it?—A. If we could get something else to bargain with.

Q. Mr. Crawley, you heard Mr. Moore's testimony a minute ago, Mr. Moore, who just left the stand before you came up?—A. Yes.

Q. Did you hear the same statement made that Mr. Moore [329] testified having heard made with respect to the fact that the bargaining committee would encourage people to accept the point plan if the Company would grant union security?—A. It was brought up out there. I don't know exactly how it was brought up, but said we would go in there and try to explain the point system the best we could.

Q. If we would give you union security?—A. If we could get together on the contract.

* * *

HYRUM WESLEY GIDDENS (Board's witness).

* * *

DIRECT EXAMINATION

* * *

Q. Where do you work?—A. Crompton-Highland Mills.

Q. Are you on the negotiating committee?—A. Yes, sir.

Q. Did you attend its sessions?—A. Yes, sir.

Q. Were you present on December 19?—[330] A. Yes, sir.

Q. At that time did you hear Mr. Douty say these words, or these words in substance: that he would not agree to any contract, irrespective of other provisions, that did not provide for union security and the collection of union dues?—A. No, sir.

Q. Did you hear that statement made at any previous meeting?—A. No, sir.

Q. Did you hear at any of those meetings, a statement, in substance or effect, that the union would not sign any contract that did not have provision for union security in it?—A. No, sir.

Q. Irrespective of any other terms of the contract?—A. No, sir.

* * *

[331] WILLIAM RILEY (Board witness).

* * *

DIRECT EXAMINATION

* * *

Q. Where do you work?—A. Highland Mills.

* * *

Q. Are you on the Union negotiating committee?—A. Yes, sir.

Q. Were you present at its meetings?—A. Yes, sir.

Q. Did you hear Mr. Douty, on December 19, say, directly [332] or in substance these words: That he would not agree to any contract, irrespective of other provisions, that did not

provide for union security and the collection of Union dues?—A. No, sir.

* * *

[335] (Thereupon the documents heretofore marked "Board's Exhibits Nos. 4–A and 4–B" for identification were received in evidence.)

* * *

[353] Mr. WILLIAMS. Mr. Chairman, Mr. Purdom has spent quite a bit of time making crystal clear a thing which was equally clear from our Answer. There is no argument whatsoever about the fact that the December 31 wage increase which was announced on January 1, 1946, was unilaterally determined. The unfair labor practice with which we were charged is that we did not create the misleading impression that the Union was responsible [354] for getting that wage increase for the employees, and other than that we are charged with no unfair labor practice.

* * *

[355] We made the January 1 wage increase unilaterally, and Mr. Purdom is hardly entitled to as much credit as he wishes for making that crystal clear, because we made it clear in our Answer.

We called the Union in and let them know about it out of courtesy. There is no possibility that we will ever get rid of this Union. We have got to live with it a long time to come. And while we are bogged down at the moment, we still have some hope that maybe we will get along with them. Certainly the members of the bargaining committee we wanted to treat with courtesy, and we wanted them to know of the wage increase at least as soon as anyone else. But we made no effort to permit the Union to get credit for the increase which it had not been instrumental in obtaining.

* * *

[404] (Whereupon, at 6:15 o'clock p. m., Thursday, February 21, 1946, the hearing in the above-entitled matter was closed.)

* * *

BOARD'S EXHIBIT 2

CROMPTON-HIGHLAND MILLS, RATE SCHEDULE, OCTOBER 18, 1945

Card room

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75 point hour	Earnings at 80 point hour	Guaranteed minimum
		per hour	*per hour*	*per hour*
Picker Tender	$0.70	$0.625	$0.66	$0.55
Card Tender	.75	.663	.70	.55
Lapper Tender	.75	.663	.70	.55
Comber Tender	.75	.663	.70	.55
Drawing Tender	.82	.715	.756	.5925
Slubber Tender	.82	.715	.756	.5925
Intermediate Tender	.82	.715	.756	.5925
Speeder Tender	.82	.715	.756	.5925
Card Grinder	.675	[1] .845	[1] .875	.735
Roving Hauler [3]	.675	[1] .605	[1] .74	.55
Oiler	.75	.663	.70	.55

HOURLY RATED JOBS

	Per hour
Spare Hands	$0.5925
(Spare hands are paid at hourly rate of 0.5925, or earnings on standards, whichever is the greater.)	
Sweeper	.55
Drawing Hauler	.55
Opener Room Man	.55
Janitor	.55

Spinning dept.

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75-point hour	Earnings at 80-point hour	Guarsnteed minimum
		per hour	*per hour*	*per hour*
Spinners	$0.75	$0.663	$0.70	$0.605
Filling Doffer:				
Fine Yarn	.85	.738	.78	.61
Coarse Yarn	.80	.70	.74	.58
Warp Doffer	.80	.70	.74	.58
Roll Picker	.675	.605	.64	.55
Warper Tender	.80	.70	.74	.58
Winder Helper	.55	[1] .64	[1] .66	.55
Winder Tender	.71	.633	.668	.55
Winder Fixer	.425	.8038	.82	.735
Conditioning-Machine Man	.75	[1] .70	[1] .73	.58
Oiler	.75	.663	.70	.55
Roving Hauler	.75	[1] .67	[1] .70	.55
Creeler [3]	.71	.633	.668	.55

See footnotes at end of table.

HOURLY RATED JOBS

	Per hour
Overhauler	$0.80
Piece Collector	.58
Humidifier Man	.555
Sweeper	.55
Yarn Boy	.55
Quill Painter	.55
General Hands	.55

Job rate for warp spinners same as shown for spinners, present incumbents to be paid $5.80 per day for 10 sides.

Warp doffer rate is same as shown, except present incumbents are paid a guaranteed minimum of 0.655 per hour.

Weave room

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75 point hour	Earnings at 80 point hour	Guaranteed minimum
		Per hour	*Per hour*	*Per hour*
Weaver [4]	$0.85	[2] $0.798	[2] $0.844	$0.655
Loom Fixer [4]	1.10	[2] 1.00	[2] 1.06	.855
Battery Filler [3]	.70	.625	.66	.55
Warp Man [3]	.75	.663	.70	.555
Tying-In Machine Operator [3]	.956	.8175	.865	.735
Drawing-In Hand [3]	.85	.738	.78	.628
Cloth Doffer [3]	.65	.588	.62	.555
Slasher Tender [3]	.923	.7925	.839	.695
Slasher Helper [3]	.71	.633	.668	.555
Quill Machine Operator [3]	.65	.5875	.62	.555
Loom Cleaner [3]	.675	.605	.64	.55
Oiler [3]	.75	.663	.70	.55

HOURLY RATED JOBS

	Per hour
Head Inspector	$0.92
Overhauler	.85
Change Man	.74
Filling Hauler	.63
Smash Hand	.628
Inspector	.628
Pick Out Hand	.628
Humidifier Man	.555
Cloth Hauler	.555
Elevator Man	.555
Filling Inspector	.555
Sweepers	.55
Drop Wire Hands	.55
Quill Gatherer	.55
Scrubber	.55

SPARE WEAVERS

(When on weaving assignments, spare weavers are paid $0.655 per hour, or earnings on standards, whichever is the greater.)

See footnotes at end of table.

Cloth room

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75-point hour	Earnings at 80-point hour	Guaranteed minimum
		per hour	*per hour*	*per hour*
Trimmers and Inspectors:				
Face Inspectors	$0.85	$0.738	$0.78	$0.555
Preinspectors	.85	.738	.78	.60
Back Inspectors	.85	.738	.78	.62
Turnover Folder	.85	.738	.78	.55
Shear Operator	.80	.70	.74	.58
Folder, Weigher and Marker	.85	.738	.78	.61
Bale Press Weigher [3]	.80	.70	.74	.625
Grader [3]	.85	.738	.78	.6025
Roll Grader (Machine) [3]	.85	.738	.78	.6025

HOURLY RATED JOBS

	Per hour
Move Man	$0.6025
Creeper Hand	.595
Sweeper	.55
General Hand	.55

Folder, weigher, and marker rate is same as shearer except present incumbents are paid a guaranteed minimum of 68 cents per hour.

Stock room

HOURLY RATED JOBS

	Per hour
Stockroom and Order Man, 1st shift	$0.70
Stockroom Men, 2d and 3d shift	.56
Warehouseman	.60

Shop and yard

HOURLY RATED JOBS

	Per hour
Maintenance (Class B)	$0.80
Electrician	.80
Carpenter	.69
General Hand	.59
Outside Labor	.55
Fireman	.55
Watchmen	.55

FOOTNOTES

[1] Includes indirect premium.
[2] Includes quality bonus.
[3] Incentive rates to be applied as soon as practical.
[4] Complete installation of standards in this classification will be made as soon as practical.

BOARD'S EXHIBIT 3

CROMPTON-HIGHLAND MILLS, RATE SCHEDULE, DECEMBER 31, 1945

NEW RATE SCHEDULE

(1) Contains all changes in rates effective December 31st, 1945.

(2) Note at bottom of spinning department on warp doffers remains the same.

(3) Roll grader left out in Cloth Room. Bale Press guarantee changed.

(4) Tying-in machine and slasher tender rate per 100 points are adjusted as your instructions Saturday. These rates are what were posted yesterday.

(5) Warehouseman left off Stockroom. Painter at 0.745. Painter helper at 0.735.

Card room

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75 point hour	Earnings at 80 point hour	Guaranteed minimum
		per hour	*per hour*	*per hour*
Picker Tender	$0.90	$0.675	$0.72	$0.59
Card Tender	.95	.713	.76	.59
Lapper Tender	.95	.713	.76	.59
Comber Tender	.95	.713	.76	.59
Drawing Tender	1.02	.765	.816	.6325
Slubber Tender	1.02	.765	.816	.6325
Intermediate Tender	1.02	.765	.816	.6325
Speeder Tender	1.02	.765	.816	.6325
Card Grinder	.735	.895	.925	.775
Roving Hauler*	.735	.71	.74	.59
Drawing Hauler*	.735	.71	.74	.59
Oiler	.95	.713	.76	.59

HOURLY RATED JOBS

	Per hour
Spare Hand	$0.6325
(Spare hands are paid at hourly rate of $0.6325, or earnings on standard, whichever is the greater.)	
Sweeper	.55
Janitor	.55
Opener Room Man	.59

*Applied to standards 12–45.

Spinning department

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75-point hour	Earnings at 80-point hour	Guaranteed minimum
		Per hour	*Per hour*	*Per hour*
Spinners	$0.75	$0.713	$0.76	$0.645
Filling Doffer:				
Fine Yarn	1.05	.788	.84	.65
Coarse Yarn	1.00	.75	.80	.62
Warp Doffer	1.00	.75	.80	.62
Roll Picker	.875	.655	.70	.59
Warper Tender	1.00*	.75	.80	.62
Winder Helper	.61	1.69	1.71	.59
Winder Tender	.91	.683	.728	.59
Winder Fixer	.485	1.855	1.875	.775
Conditioning Machine Man	.81	1.75	1.78	.62
Oiler	.95	.713	.76	.59
Roving Hauler	.81	1.72	1.75	.59
Creeler*	.91	.683	.728	.59

HOURLY RATED JOBS

	Per hour
Overhauler	$0.84
Piece Collector	.62
Humidifier Man	.595
Sweeper	.55
Yarn Boy	.55
Quill Painter	.55
General Hands	.59

Job rate for warp spinners same as shown for spinners, present incumbents to be paid $6.12 per day for 10 sides.

Warp doffer rate is same as shown, except present incumbents are paid a guaranteed minimum of 0.655 per hour.

*Applied to standards 12-45.

Weave room

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75-point hour	Earnings at 80-point hour	Guaranteed minimum
		per hour	*per hour*	*per hour*
Weaver [4]	$1.05	[2] $0.848	[2] $0.904	$0.695
Loom Fixer [4]	1.30	[2] 1.05	[2] 1.12	.895
Battery Filler [3]	.90	.675	.72	.59
Warp Man [3]	.95	.713	.76	.595
Tying-In Machine Operator [3]	1.15	.863	.92	.775
Drawing-In Hand [3]	1.05	.788	.84	.668
Cloth Doffer [3]	.85	.638	.68	.595
Slasher Tender [3]	1.10	.825	.88	.735
Slasher Helper [3]	.91	.683	.728	.595
Quill Machine Operator [3]	.85	.638	.68	.595
Loom Cleaner [3]	.875	.655	.70	.59
Oiler*	.95	.713	.76	.59

HOURLY RATED JOBS

	Per hour
Head Inspector	$0.96
Overhauler	.895
Change Man	.78
Filling Hauler	.67
Smash Hand	.668
Inspector	.668
Pick-out Hand	.668
Humidifier Man	.595
Cloth Hauler	.595
Elevator Man	.595
Filling Inspector	.595
Sweepers	.55
Drop Wire Hands	.59
Quill Gatherer	.59
Scrubber	.55

See footnotes at end of table.

Spare weavers

(When on weaving assignments, spare weavers are paid 0.695 per hour, or earnings on standard, whichever is the greater.)
*Applied to standards 12-12-45.

Cloth room

INCENTIVE RATED JOBS

	Rate per 100 points	Earnings at 75 point hour	Earnings at 80 point hour	Guaranteed minimum
		per hour	*per hour*	*per hour*
Turn-over Inspectors:				
Face Inspectors	$1.05	$0.788	$0.84	$0.63
Preinspectors	1.05	.788	.84	.64
Back Inspectors	1.05	.788	.84	.66
Turn-over Folder	1.05	.788	.84	.62
Shear Operator	1.00	.75	.80	.62
Folder, Weigher and Marker	1.05	.788	.84	.65
Bale Press Operator (3)	1.00	.75	.80	.602
Grader (3)	1.05	.788	.84	.6425

HOURLY RATED JOBS

	Per hour
Move Man	$0.6425
Creeper Hand	.635
General Hand	.59
Sweeper	.55

Stock room

HOURLY RATED JOBS

	Per hour
Stock Room and Order Man, 1st Shift	$0.74
Stock Room Men, 2nd and 3rd Shifts	.60

Shop and yard

HOURLY RATED JOBS

	Per hour
Maintenance (Class B)	$0.85
Electrician	.85
Carpenter	.74
General Hand	.64
Outside Labor	.55
Fireman	.59
Watchman	.60
Painter	.745
Painter Helper	.735

FOOTNOTES

[1] Includes indirect premium.
[2] Includes quality bonus.
[3] Incentive rates to be applied as soon as practical.
[4] Complete installation of standards in this classification will be made as soon as practical.

BOARD'S EXHIBIT 4A

CROMPTON-HIGHLAND MILLS, INC.

GRIFFIN, GEORGIA

APRIL 2, 1945.

NATIONAL WAR LABOR BOARD,
Regional Office, Atlanta, Georgia.

GENTLEMEN: We are enclosing our form #10 application, with supplementary data, for permission to extend our wage incentive plan to three groups of workers in our Weave Room.

In order to best meet today's operating conditions, and cause the least possible disruption of work schedules, we request permission to make this installation gradually, reporting to your office at intervals on the progress which has been made.

Very truly yours,

CROMPTON-HIGHLAND MILLS, INC.
By H. A. PICKFORD, *Mill Manager.*

BOARD'S EXHIBIT 4B

NATIONAL WAR LABOR BOARD

APPLICATION FOR APPROVAL OF A WAGE OR SALARY RATE ADJUSTMENT OR SCHEDULE

This application is to be filed with the Wage and Hour and Public Contracts Divisions of the United States Department of Labor.

DO NOT WRITE IN THIS SPACE

Application No.....
W & H Reference No....
Date Received W. & H...
W & H Office.....
Date Received NWLB..

1. (a) Name of employer: Crompton-Highland Mills, Inc.
(b) Main office address of employer: P. O. Box #115, Griffin, Georgia.
(c) Telephone No.: Griffin #2293.
(d) Address of place of business involved in this application (if different from (b) above).....

2. (a) Industry: Cotton textiles. (b) Type of establishment: Cotton mill.
(c) Present products or services: Carding, spinning, weaving, Navy jungle cloth, corduroys, velveteens.

3. (a) Have the products made or handled or the services performed by this establishment changed since January 1, 1941?

Yes ☐ No ☒

(b) If answer to (a) is "Yes," give the principal products handled or made, or services performed from January 1, 1941, to time of change.....

4. (a) Has this employer ever made any other application for a wage or salary rate adjustment for any employees of this place of business, or have such wage or salary rates been the subject of a dispute certified to the National War Labor Board?

Yes ☒ No ☐

(b) If the answer to (a) is "Yes," give the name and location in each instance of the offices to which the applications or disputes were forwarded, and the approximate date on which this was done: Atlanta, Ga., office, approved effective March 27, 1944.

(c) If the adjustment for which this application is made is approved, is it anticipated that the approval will serve as a basis for similar or other adjustments? Further extension of incentive plan. Yes ☒ No ☐

5. (a) Has this employer ever made any application for the approval or the modification of a schedule under General Orders 31, 5, or Part III of 9 for this place of business? Yes ☐ No ☒

(b) If the answer to (a) is "Yes," give the name and location in each instance of the offices to which the applications were forwarded and the approximate date on which this was done .....

6. (a) Are any of the employees involved in the proposed adjustment or schedule now employed on any United States Government contracts or subcontracts? Yes ☒ No ☐

(b) If answer to (a) is "Yes":

(1) How many of these contracts or subcontracts are cost-plus? None.

(2) How many of these contracts or subcontracts are lump-sum? All.

(c) Will the proposed adjustment or schedule, if approved, be the basis for an increase to the Government in the price of any product or service or be the basis for opposing otherwise justified reductions in such prices? Yes ☐ No ☒

7. Will the proposed adjustment or schedule, if approved, be the basis of an application to the Office of Price Administration for an increase in the price ceiling of any commodity or service?

Yes ☐ No ☒

(If "Yes" is checked, an application for price relief must be filed with the Office of Price Administration within 15 days after date of filing *this* application.)

8. If the prices or rates for the products or services of this place of business are regulated by any National, State, or local regulatory agency other than the Office of Price Administration or a procurement agency of the Federal Government:

(a) State the name of the agency .....

(b) Will the proposed adjustment be the basis for an application for the modification of such prices or rates? Yes ☐ No ☐

9. For the places of business involved in this application, state:

(a) Approximate total number of employees on pay roll: 732.

(b) Number of employees involved in the proposed adjustment or employed in the job classifications covered by the proposed schedule: 289.

10. (a) Is there a duly recognized or certified labor organization which represents any of the employees involved in this application? Yes ☐ No ☒

(b) Has the National Labor Relations Board or a similar State agency ordered the holding of an election to determine the status of a labor organization as the representative of any of the employees involved in this application? Yes ☐ No ☒

(c) If the answer to (a) or (b) is "Yes," state the names and addresses of the labor organizations:

Department or type of employee	Labor organization	
	Name	Address

11. This application is the result of the action indicated below (check one, or specify in (d)):

(a) Voluntary proposal by employer: ☒.

(b) Agreement between employer and labor organization (attach a copy of the agreement) ☐.

(c) Arbitrator's award (attach a copy of the award) ☐.

(d) Other (specify) ☐.

12. (a) As of what date is it proposed that the adjustment or schedule shall take effect? Date of approval.

(b) If the proposed date on which the adjustment or schedule is to take effect is earlier than the date of application, state why such retroactive approval is sought: .....

13. Which of the following is the reason for the proposed adjustment or schedule? (Check or enter applicable items. See Instruction II.)

(a) To adjust wage or salary rates under the Little Steel Formula ☐.

(b) To eliminate substandards of living ☐.

(c) To adjust the rates of specific job classifications:

(1) With respect to the rates paid for interrelated job classifications within the establishment ☐.

(2) With respect to the rates paid by other employers for the same or similar job classifications in the same area ☐.

(d) (1) To establish rates or rate ranges and/or a plan for making individual adjustments under General Order 31 ☐.

(2) To modify existing rates or rate ranges and/or an existing plan for making individual adjustments under General Order 31 ☐.

(e) Other. If the adjustment involves paid vacations, an incentive plan, night-shift differentials, bonuses, etc., check here and attach three copies of a detailed statement of the proposal and the reason for it ☒.

DO NOT ANSWER ITEM 14 UNLESS A GENERAL WAGE OR SALARY RATE ADJUSTMENT UNDER THE "LITTLE STEEL FORMULA" IS PROPOSED

14. The information requested below in items 14 (b), (c), and (d) is to be furnished for all employees in the places of business involved in this application whose wage or salary rates are subject to the jurisdiction of the National War Labor Board. (For exceptions, see Instruction I.)

(a) Describe the unit (see Instruction I) carefully if the information is not being furnished for all employees of one place of business.....

(b) State the amount of the proposed adjustment and whether it will be distributed equally to all employees. If this adjustment is to be distributed in different amounts to different employees, state exactly how the distribution will be made.....

(c) Furnish the information requested below for all employees, or for the unit described in 14 (a) above, for (1) the pay-roll period ending nearest to January 15, 1941, and (2) the pay-roll period ending nearest the date of this application.

For pay-roll period ending nearest to—	Pay-roll periods used		Total number employees on pay roll actually working	Total hours worked (see Instruction VI)	Total earnings at straight-time rates (see Instruction VI)	Average straight-time hourly earnings (Col. (6) ÷ Col. (5))
	From—	To—				
	Month Day Year	Month Day Year				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Jan. 15, 1941						
Date of application						

(d) With respect to the unit for which the adjustment is being sought, if any adjustment has been made in the wage or salary rate of 10 percent or more of the number of employees on the pay roll actually working during any pay-roll period since January 1, 1941, or in the period immediately preceding that date, fill in the form below. Use a separate line for each adjustment. Explanations similar to the following should be used in column 3: "Merit increases," "General increase," "Increase to bring wages in line with those paid in other plants," "Increases to comply with Federal (State) minimum wage laws," etc.

Department, occupation, or type of employee affected	Date of adjustment	Reason for adjustment	Amount of adjustment (cents per hour, or percent)	Number of employees directly affected by adjustment, at time of adjustment	Total number of employees on pay roll in the entire unit actually working at time of adjustment	For a pay-roll period immediately preceding the date of adjustment, furnish the following information for the employees affected by the adjustment (see Instruction VI)		
						Total hours worked	Total earnings at straight-time rates	Average straight-time hourly earnings (Col. (8) ÷ Col. (7))
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

DO NOT ANSWER ITEM 15 UNLESS THE PROPOSED ADJUSTMENT IS TO ELIMINATE SUBSTANDARDS OF LIVING OR TO ADJUST THE RATES OF SPECIFIC JOB CLASSIFICATIONS OR TO ESTABLISH JOB CLASSIFICATION RATES OR RATE RANGES UNDER GENERAL ORDER NO. 31

NOTE.—If additional space is required to answer any of the items below, continue your answers on plain sheets of paper. Be sure to number your continuations to correspond with the item and column numbers on this form. Three copies of such attachments should be submitted with this application.

15. (a) For each existing job classification for which an adjustment is proposed or for which rates or rate ranges are proposed under General Order No. 31, enter on the form below the information indicated: Pay-roll period used: From ..... To .....
(Month) (Day) (Year) (Month) (Day) (Year)

Job classification	For a pay-roll period immediately preceding the date of application								
	Number of employees in this job classification actually working	If there is an established range of rates for this job classification, state (see Instruction V)			If there is an established single rate rather than a range of rates) for this job classification, state the rate		Total hours worked (see Instruction VI)	Total earnings at straight-time rates (see Instruction VI)	Average straight-time hourly earnings (Col. (9)÷Col. (8))
		Minimum dollars or cents	Maximum dollars or cents	Per hour, week, etc.	Dollars or cents	Per hour, week, etc.			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

(b) Do employees in the classifications listed in (a) above now receive any payments (such as overtime, incentive, or bonus payments) in addition to the straight-time rates listed in (a) above Yes ☐ No ☐.

(c) If the answer to (b) is "Yes," list on separate sheets of plain paper the methods used to determine the additional payments or bonuses. The information should be presented for each job classification or group of classifications separately where such presentation is appropriate. For example, if salaried workers involved in a proposed adjustment receive bonuses based on company earnings or if wage workers receive time and one-half their straight-time rate for hours over 40, or if certain occupations receive additional incentive payments, these additions to the straight-time rates should be explained on separate attachments. Three copies of these attachments should be submitted with this application.

(d) Furnish the information requested in the table below if:

(1) It is proposed to make changes in any of the job classification rates or rate ranges listed in 15 (a) above, or

(2) Job classification rates or rate ranges are proposed (under General Order No. 31) for (A) an existing plant that heretofore paid single rates for various of its job classifications and now desires to set up rate ranges for such jobs, (B) an existing plant that heretofore had a variety of rates but no established rates or rate ranges for respective job classifications, (C) a new plant, or (D) a new department of an existing plant.

(e) On separate sheets of plain paper describe the duties and responsibilities of the job classifications listed in (d) above, except that, if adjustments are proposed in more than 10 job classifications, descriptions need be furnished for only 10 key classifications. Two copies of the descriptions should be submitted with this application. (See Instruction IV.)

(f) If, in addition to the rates of straight-time pay proposed in (d) above, bonus plans, premium payments or other such compensation are proposed which will affect the earnings of employees, give a detailed statement of such proposed changes .....

16. If approval is requested for a new plan or for the modification of an existing plan for making individual adjustments as permitted by General Order 31, describe (as requested in Instruction VI) on separate sheets of plain paper how it is proposed to make adjustments under the proposed plan. Three copies of the proposal should be submitted with this application.

17. State the methods used in arriving at the proposed ad-

(15) Bonus or premium is paid in direct proportion as production increases above above the figures typically illustrated in #7–B, equivalent to 60 points per hour. That is, 10% above those figures (10% above 60, or 66 points per hour) pays 10% above job base rate, etc.

Incentive pay for direct workers is calculated on a daily basis.

(16) Past earnings and unit cost performance.

BATTERY FILLERS

Week ending	Number of workers	Total man-hours	Total points produced	Total straight time pay roll	Earnings per hour	Cost per 100 points
9/16/44	110	4,106	173,194	$1,847.67	$0.450	$1.067
10/7/44	109	3,876	174,129	1,744.20	.450	1.002
11/18/44	104	4,078.5	181,426	1,835.33	.450	1.012
12/16/44	110	3,966	135,248	1,784.70	.450	.993
1/6/45	104	4,289	189,212	1,930.05	.450	1.020
2/10/45	113	4,232	166,917	1,904.40	.450	1.141
Averages	108.3	4,091.25	178,354.3	1,841,058	.450	1.0822

WEAVERS

9/16/44	130	5,546	272,220	$3,423.42	$.617	$1.257
10/7/44	136	5,226	227,210	3,416.14	.654	1.504
11/18/44	137	5,578	235,604	3,582.49	.642	1.508
12/16/44	137	55,712	244,412	3,904.74	.631	1.475
1/6/45	137	5,873	230,894	3,626.33	.617	1.571
2/10/45	131	5,309	241,668	3,296.28	.620	1.361
Averages	133.7	5,540.67	242,351.6	3,490.566	.639	1.4463

LOOM FIXERS

9/16/44	41	1,805	96,300	1,443.69	$0.774	$1.499
10/7/44	47	1,972	96,457	1,533.03	.777	1.589
11/18/44	46	02,020	100,363	1,525.30	.755	1.520
12/16/44	47	2,049	102,552	1,613.39	.787	1.573
1/6/45	47	22,112	106,269	3,659.55	.786	1.562
2/10/45	46	1,986	97,132	1,551.77	.781	1.598
Averages	45.7	2,000.67	99,845.5	1,554.455	.777	1.5569

NOTES: Effective March 27, 1944, The National War Labor Board, through its Fourth Regional Office, granted a flat 5¢ per hour increase to all employees under its jurisdiction in this mill. Since this is paid as a flat figure, and does not vary according to individual productive efforts, it is NOT incorporated in any figures shown in answers #16, #17, or #18.

IN OTHER WORDS, ALL PAST AND PROPOSED EARNINGS FIGURES ARE ACTUALLY 5¢ PER HOUR UNIT COSTS ARE PROPORTIONATELY HIGHER THAN SHOWN HERE.

Job classification: (If item 15 (a) above was filled out, be sure to use the same job titles here)	Number of employees in this job classification who will be directly affected by the proposal	Proposed straight-time rates of pay				
		If a range of rates is proposed for this job classification, state (see Instruction 11)			If a single rate (rather than a range of rates) is proposed for this job classification, state the rate	
		Minimum dollars or cents	Maximum dollars or cents	Per hour, week, etc.	Dollars or cents	Per hour, week, etc.
(1)	(2)	(3)	(4)	(5)	(6)	(7)

justments or schedules and any other facts which will assist the Board in determining the merits of the application.

18. Signature of applicants: This application should be signed by (a) both the employer (or his representative) and an official of any labor organization which has been recognized or certified as the representative of any of the employees covered by this application; (b) both the employer (or his representative) and an official of the labor organization if this application is the result of an arbitration award rendered as the result of an agreement between the employer and the labor organization; (c) only the employer (or his representative) if the employees covered by this application are not represented by a recognized or certified labor organization.

For the employer (Name of official) H. A. Pickford. (Title) Mgr. (Date) April 2, 1945.

Labor Organization..... Address.....

For the Labor Organization.....

(Name of official) (Title) (Date)

BOARD'S EXHIBIT 4–C

CROMPTON-HIGHLAND MILLS, INC.
BOX #115, GRIFFIN, GA.

Supplemental Information Required in Connection with Form #10, Application for Approval of a Wage Incentive Plan

The numbers use below refer to the standard check-list.

I

(1) The proposed incentive plan is on an individual basis.

(2) It is an extension into the Weave Room of a plan which has been in process of installation, in the various other departments of this mill, since June 1942. Management, supervision, and labor thoroughly understood, prior to October 3, 1942, that the plan was to be installed throughout the entire mill, as rapidly as conditions and the necessary process changes and improvements would permit.

(3) The plan will ultimately include indirect workers and supervision.

(4) The weavers (approximately 42 per shift) and the loom fixers (approximately 15 per shift) are now covered by incentive plans. The weavers are paid a straight piece rate. The fixers are paid a piece rate for production plus a flat rate per loom assigned per hour run.

(5) Since this is an extension of an existing plan, the Weave Room workers are by no means unacquainted with its general aspects. Prior to application, individually or in small groups, they will be instructed in specific details, assignments, etc. And all standards, standard working details, assignments, etc., as well as how to figure a day's pay, will be posted prominently in the department. Any subsequent revisions due to changes in specifications will also be posted.

(6) There is no recognized bargaining agent in this mill, but it has been and will continue to be standard procedure to investigate, recheck, and explain any questioned standard or assignment.

II

EXPLANATORY NOTES: In many of the following statements use will be made of the term "Point". This is an identifying

characteristic of the wage incentive plan being installed, and is defined as the amount of work produced in one minute by an average normal worker operating under nonincentive or day-work conditions, plus allowances covering personal time, fatigue, and such minor delays and interruptions as are inherent in the job in question. Note that it is a measure of work, as the yard is a measure of cloth. For 60 points of work or less, the operator is paid the job base rate. Above 60 Points of work per hour a premium or bonus is paid, directly proportionate to the production increase. Thus, for 66 Points per hour the operator is paid 10% above base rate, etc.

If, however, production on an assignment is curtailed by conditions clearly beyond the operator's control, full assignment not available, break-down, power shut-off, etc., use is made of the accompanying table of Allowances for Limited Assignment. This is a device, developed over years of engineering experience, which partially compensates an operator for loss of earning power under such circumstances. It is used as follows:

First. The operator's production for 8 hours is multiplied by the appropriate point standards. The result is the total points or units of work actually produced. If—and only if—reported conditions justify its use, the A. D. A. table is now consulted. Opposite the correct Points Produced in 8 Hours (Column A) is a value in Column B. This is the number of minutes to be allowed as compensation, and is added to the total points produced, the result being paid for in the usual way.

Any guaranteed level of earnings, such as previous average, merely acts as a peg point below which earnings are not allowed to fall, but the basic calculation remains the same, and the difference between the money actually earned and the money actually paid is analyzed for management as an excess above standard cost.

The unit of production in a Weave Room is the "pick", defined as the functioning of a loom in placing one filling thread. For convenience, the unit used here is 10,000 picks.

(7–A) The following element of basic standards are permanent, so long as the fundamental nature of the job of operating a loom does not change. From these basic element standards, put together in such combinations as may be indicated by the operating characteristics and requirements of the job in question, are calculated the production standards used in wage payment. These are guaranteed so long as the operating characteristics and requirements do not change. Periodic tests are made to see that they are still accurate and applicable.

Weavers

	Point per occurrence
(a) Fix a broken filling thread	0.412
(b) Fix a broken warp thread at the front of the loom	.770
(c) Fix a broken warp thread at the back of the loom	1.054
(d) Fix a "slam-off," also called a bang-off, or mechanical stop	.236
(e) Remove finished roll of cloth from loom	3.378
(f) Walk past the front of a loom, for any purpose	.08596
(g) Walk past the back of a loom, for any purpose	.17193
(h) Miscellaneous small jobs incidental to running a loom (point per 10,000 picks, any loom, any style)	.2848

Table of Allowances for Limited Assignment

Column A	Column B	Column A	Column B	Column A	Column B
245–251	236	369–376	155	511–519	69
252–258	232	377–384	150	520–528	63
259–265	227	385–392	145	529–537	58
266–272	223	393–400	140	538–546	53
273–279	218	401–408	135	547–555	48
280–286	213	409–416	130	556–564	43
287–293	208	417–424	125	565–574	37
294–300	204	425–433	120	575–583	32
301–308	199	434–441	115	584–593	27
309–315	194	442–450	110	594–602	21
316–323	190	451–458	105	603–612	16
324–330	185	459–467	99	613–621	11
331–338	180	468–475	94	622–626	8
339–345	175	476–484	89	627–630	6
346–353	170	485–492	84	631–635	4
354–360	165	493–501	78	636–639	2
361–368	160	502–510	73	640	0

Column A is the number of Points of actual work produced in 8 hours.
Column B is the number of minutes allowed as compensation.

Battery Fillers

(a) Push small truck, empty or full of bobbins of yarn ..... 0.00682 point per foot
(b) Load bobbins of yarn from supply truck to small truck ..... 0.0088 point per bobbin
(c) Push small truck from loom battery to loom battery, and place bobbins of yarn in operating position ..... 0.1225 point per bobbin

Loom Fixers

(a) Install the average small part or a loom ..... 7.8 points per part installed
(b) Install major parts on a loom ..... 16.0 to 120.0 points per part installed
(c) Examine and analyze a stopped loom, make necessary adjustments, and check operation after completion. Includes no parts installation:
5.52 points per occurrence @ 0.085 occurrences per loom hour.
5.64 points per occurrence @ 0.080 occurrences per loom hour.
5.88 points per occurrence @ 0.074 occurrences per loom hour.
6.24 points per occurrence @ 0.062 occurrences per loom hour.
(d) Go to store room for parts and supplies @ 6.2 points per occurrence.
(e) Loom inspection 0.6 point per loom per 8 hour shift at 100% operating efficiency
(f) Remove empty beam and install new warp @ 31.0 points per occurrence.

(7–B) The following are typical production standards. They are calculated from the basic element standards shown in

#7–A. They represent the production above which incentive bonus will be paid—in other words, 60 point hour production—and they are expressed in ten thousands of picks per 8-hour shift. Styles of cloth shown are representative of the work being done today.

Styles	Weavers			Battery fillers		Loom fixers	
	Draper loom model	10 M picks	Loom assignment	10 M picks	Loom assignment	10 M picks	Loom assignment
5482	XK	238.569	42.4	301.508	53.5	530.947	94.3
5466	XK	227.488	40.4	305.538	54.3	5569.233	101.1
	K	237.488	42.9	305.538	57.7	547.407	103.3
5500	XK	1181.543	32.2	566.706	100.7	569.233	101.1
	K	181.543	34.3	566.706	107.0	547.407	103.3
5445	XK	179.843	31.9	566.706	100.7	569.233	101.1
	K	179.843	33.9	566.706	107.0	547.407	103.3
4973	66"-D	167.715	40.8	137.694	33.5	464.077	113.0

(8) The standards and assignments were set by time study.

(9) Periodic checks will be made by trained standards department time study men, to determine whether production standards are still accurate and applicable. If changes are needed, those men will calculate them from the basic element standards shown in #7–A.

(10) Question does not apply to this application.

(11) Learners, after a short period with a trained operator, will be given a small assignment of their own. During the learning period they will be paid an hourly rate lower than the base rate of their job, and will be advanced to the base rate by biweekly review by their foreman. As the hourly rate advances the work assignment will be increased, until both are standard for the job. During this learning period the production figure at which bonus begins will be lowered below 60 points per hour by the following formula:

$$\frac{\text{Hourly rate}}{\text{Job base rate}} \times 60 \text{ points per hour}$$

Production above this figure will be paid for by a proportionate bonus, as in the case of a regular operator. Incidentally, the operator training a learner will be paid an average of the previous two weeks earnings, during the training period.

(12) Indirect works are not included in this application.

(13) See #12.

(14) Present average earnings will become guaranteed minima under the proposed plan. The average will cover a period of one month immediately preceding the date of application.

Under the proposed incentive plan this flat 5¢ per hour will continue to apply, as it does at present, in addition to any and all other wages.

Under the proposed incentive plan weavers and loom fixers, in addition to their earnings for production, will receive varying bonuses for high quality of output. Tables showing the exact amounts of this bonus, for various percentages of "firsts," or good quality cloth, are shown below. The higher bonuses for style #5482 (Navy Jungle Cloth) are in line with present policy, installed prior to October 3, 1942.

Cost and earnings figures shown in answers #17 and #18 are based on an assumed average of "B" quality (90% thru 98.8% firsts), considered to be probable top practical accomplishment.

PROPOSED QUALITY BONUS PLAN

Classifications	Grade	Percentage of first produced	Bonus per 100 points or units of work	
			5482	Others
Weavers	E	Less than 90	0	0
	D	90 through 93.9	$0.036	$0.020
	C	94 through 96.9	.072	.040
	B	97 through 98.9	.108	.060
	A	99 or over	.144	.080
Battery Fillers	Not responsible for quality, hence no quality bonus.			
Loom fixers	E	Less than 90	0	0
	D	90 through 93.9	.045	.025
	C	94 through 96.9	.090	.050
	B	97 through 98.9	.135	.075
	A	99 or over	.180	.100

(17 and 18) Proposed cost per 100 points or units of work. Quality is assumed to be of "B" grade, and the proportion of style 5482 to "others" is identical with the average of the six reference weeks quited in #16. In other words, the costs per 100 points shown here are directly comparable with the average costs shown in #16. An extra five per cent is included, to cover such excesses as the Allowance for Limited Assignment which was explained in #2.

Weavers, $0.85 basic, plus $0.083 bonus plus $0.047 excess equals ..... $0.980 total

Battery fillers, $0.70 basic plus $0.035 excess equals ..... .735 total

Loom fixers, $1.10 basic plus $0.104 bonus plus $0.060 excess equals ..... 1.264 total

Proposed earnings per hour at various levels of productive efficiency. Bonus starts at 60 points per hour. Figures are shown separately for style 5482 and "others," and also on a weighted average basis which is directly comparable with the average earnings per hour shown in #16.

Classifications	Earnings per hour at various points or units of work produced in 1 hour				
	60	65	70	75	80
Battery fillers	$0.42	$0.455	$0.49	$0.525	$0.56
Weavers:					
5482	.5784	.6227	.6706	.7185	.7664
Other	.5460	.5915	.6370	.6825	.7280
Average	.5599	.6066	.6533	.6999	.7466
Fixers:					
5482	.7410	.8026	.8645	.9263	.9880
Other	.7050	.7638	.8225	.8813	.9400
Average	.7224	.7826	.8426	.9030	.9632

BOARD'S EXHIBIT 6

QUESTION 9

Weave Room weavers and loom fixers.—All production is measured in points, a point being the amount of work produced in one minute by an average normal worker operating under nonincentive or day-work conditions, plus allowances covering personal time, fatigue, and inherent incidental delays. For 60 points of work or less per hour the operator is paid the job base rate. Above 60 points of production per hour a proportionate premium is paid—i. e., 66 points of work per hour pays 10% above job base rate, etc. Each style of cloth has its own point standard per unit of production, but the above description best answers this question.

BOARD'S EXHIBIT 10

AUGUST 8, 1945.

REGIONAL ATTORNEY,
Fourth Regional Office,
National War Labor Board,
1331 Candler Building, Atlanta, Georgia.

DEAR SIR: In June 1942, the C. L. Stevens Company of Maryland, Baltimore, Maryland, began the installation of their "Point Plan" of wage incentives in this mill. It was generally understood by management, supervision, and labor, that this plan was to be extended throughout the mill, and was to include not only direct labor, but also certain indirect and supervisory employees.

Work on this plan has proceeded from that date to the present time, as rapidly as conditions and necessary process changes permitted. Some incentive installations were made prior to October 3, 1942, and some were made after that date.

It has been our understanding, and we have proceeded on the assumption, that under the circumstances we violated no N. W. L. B. regulations in making these installations, prior to the issuance of General Order #38. Since the issuance of that Order we have made only one installation in a new department, the Weave Room, and on April 12, 1945, (N. W. L. B. case #4-31562) ~~we received~~ approval for that one.

In order that our records may be complete on this wage incentive plan to date, we would appreciate a ruling by your office on the following question.

Based on the facts as set forth in this letter, have we, in your opinion, violated N. W. L. B. regulations in extending our incentive plan to new departments and groups within departments between October 3, 1942, and the date of issuance of General Order #38?

Yours very truly,

CROMPTON-HIGHLAND MILLS, INC.
By H. A. PICKFORD.

BOARD'S EXHIBIT 12–A

JANUARY 1ST, 1946.

Mr. KENNETH DOUTY,
Georgia Director, T. W. U. A.–C. I. O., Room 214,
75 Ivy Street NE. Atlanta 3, Georgia.

DEAR MR. DOUTY: In the course of our extended contract negotiations we have repeatedly told you that our mill would be among the first to make wage adjustments in this locality. We have learned that certain of the mills in this locality are about to adjust their wage rates and we are, therefore, making comparable adjustments in our wage rates effective Monday, December 31st, 1945. A copy of the notice which has been posted in the mill today outlining the various rate adjustments is attached hereto.

Very truly yours,

CROMPTON-HIGHLAND MILLS.
H. A. PICKFORD, *Manager.*

HAP/bp.

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BOARD'S EXHIBIT 12–B

NOTICE

JANUARY 1ST, 1946.

In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31st, 1945. A list of the various adjustments applying to the jobs in your department is shown below:

Stock Room, Shop, Yard

Job	Old hourly rate	New hourly rate
Stock Room and Order Man 1st Shift	$0.70	$0.74
Stock Room and Order Man 2nd and 3rd Shifts	.56	.60
Maintenance	.80	.85
Electrician	.80	.85
Carpenter	.69	.74
General Hand	.59	.64
Outside Labor	.55	No change
Fireman	.55	.59
Watchman	.55	.60
Painter	.695	.745
Painter Helper	.695	.735

BOARD'S EXHIBIT 12-C

JANUARY 1ST, 1946.

NOTICE

In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31st, 1945. A list of the various adjustments applying to the jobs in your department is shown below:

Card Room

JOBS ON STANDARD

	Old rate per 100 points	New rate per 100 points	Amount of increase @ 75-point hour	Amount of increase @ 80-point hour	Guaranteed minimum
			Per hour	*Per hour*	
Picker Tender	$0.70	$0.90	$0.05	$0.06	$0.59
Gard Tender	.75	.95	.05	.06	.59
Lapper Tender	.75	.95	.05	.06	.59
Comber Tender	.75	.95	.05	.06	.59
Drawing Tender	.82	1.02	.05	.06	.6325
Slubber Tender	.82	1.02	.05	.06	.6325
Intermediate Tender	.82	1.02	.05	.06	.6325
Speeder Tender	.82	1.02	.05	.06	.6325
Card Grinder	.675	.735	.05	.05	.775
Roving Hauler	.675	.735	.05	.05	.59
Oiler	.75	.95	.05	.06	.59
Drawing Hauler	.675	.735	.05	.05	.59

OTHER JOBS

	Old hourly rate	New hourly rate
Janitor	$0.55	No change
Sweeper	.55	No change
Opener Room Man	.55	$0.59

BOARD'S EXHIBIT 12–D

JANUARY 1ST, 1946.

NOTICE

In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31st, 1945. A list of the various adjustments applying to the jobs in your department is shown below:

JOBS ON STANDARD

	Old rate per 100 points	New rate per 100 points	Amount of increase @ 75-point hour	Amount of increase @ 80-point hou	New guaranteed minimum
			Per hour	*Per hour*	
Spinners, Filling	$0.75	$0.95	$0.05	$0.06	$0.645
Doffers:					
Fine	.85	1.05	.05	.06	.65
Coarse	.80	1.00	.05	.06	.62
Warp Doffer	.80	1.00	.05	.06	.655
Roll Picker	.675	.875	.05	.06	.59
Warper Tender	.80	1.00	.05	.06	.62
Winder Helper	.55	.61	.05	.05	.59
Winder Tender	.71	.91	.05	.06	.59
Winder Fixer	.425	.485	.05	.06	.775
Conditioning Machine Operator	.75	.81	.05	.05	.62
Oiler	.75	.95	.05	.06	.59
Roving Hauler	.75	.81	.05	.05	.59
Creeler	.71	.91	.05	.06	.59

OTHER JOBS

	Old Hourly Rate	New Hourly Rate
Warp Spinner	50¢/side +10¢/hour	50¢/side +14¢/hour
Overhauler	$0.80	$0.84
Piece Collector	.58	.62
Humidifier Hand	.555	.595
Sweeper	.55	No change
Yard Boy	.55	No change
Quill Painter	.55	No change
General Hands	.55	$0.59

BOARD'S EXHIBIT 12–E

NOTICE—WEAVE ROOM

JANUARY 1ST, 1946.

In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31st, 1945. A list of the various adjustments applying to the jobs in your department is shown below:

JOBS ON STANDARD

	Old rate per 100 points	New rate per 100 points	Amount of increase @ 75-point hour	Amount of increase @ 80-point hour	New guaranteed minimum
			Per hour	*Per hour*	
Weaver	$0.85	$1.05	$0.05	$0.06	$0.695
Loom Fixer	1.10	1.30	.05	.06	.895
Oiler	.75	.95	.05	.06	.595

OTHER JOBS

	Old hourly rate	New hourly rate
Battery Filler	$0.55	$0.59
Warp Man	.55	.59
Tying-in Machine Operator	.735	.775
Drawing-in Hand	.628	.668
Cloth Doffer	.555	.595
Slasher Tender	.695	.735
Slasher Helper	.555	.595
Quill Machine Operator	.555	.595
Loom Cleaner	.55	.59
Head Inspector	.92	.96
Head Loom Fixer	.92	.96
Overhauler	.855	.895
Change Man	.74	.78
Filling Hauler	.63	.67
Smash Hand	.628	.668
Inspector	.628	.668
Pick-out Hand	.628	.668
Humidifier Man	.555	.595
Cloth Hauler	.555	.595
Elevator Man	.555	.595
Filling Inspector	.555	.595
Sweepers	.55	No change
Drop Wire Hands	.55	.59
Quill Gatherer	.55	.59
Scrubber	.55	No change

BOARD'S EXHIBIT 12–F

NOTICE—CLOTH ROOM

JANUARY 1, 1946.

In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31, 1945. A list of the various adjustments applying to the jobs in your department is shown below:

JOBS ON STANDARD

	Old rate per 100 points	New rate per 100 points	Amount of increase @ 75-point hour	Amount of increase @ 80-point hour	N guaranteed minimum
			Per hour	*Per hour*	
Face Inspector	$0.85	$1.05	$0.05	$0.06	$0.63
Preinspector	.85	1.05	.05	.06	.64
Back Inspector	.85	1.05	.05	.06	.66
Turn-Over Folder	.85	1.05	.05	.06	.63
Shear Operator	.80	1.00	.05	.06	.62
Folder, Weigher, and Marker	.85	1.05	.05	.06	.65

OTHER JOBS

	Old hourly rate	New hourly rate
Move Man	$0.6025	$0.6425
Creeper Hand	.595	.635
General Hand	.55	.59
Bale Press Operator	.562	.602
Grader	.6025	.6425

BOARD'S EXHIBIT 13

AGREEMENT

This Agreement, made and entered into this ..... day of ....., 1945, by and between Crompton-Highland Mills, Inc., of Griffin, Georgia, hereinafter called the "Company;" and Textile Workers Union of America, CIO, hereinafter called the "Union;" witnesseth:

That for and in consideration of the mutual promises hereinafter set forth, the parties hereto have agreed and do agree as follows:

Section 1.—Recognition

The Company recognizes and will deal with the Union as the sole and exclusive collective bargaining agency in all matters pertaining to wages, hours of employment, or other conditions of employment for all employees of the Company, except executives, superintendents, overseers, and office employees.

The term "employee" or "employees" when used herein, means those covered by this Agreement as in this Section defined.

Section 2.—Adjustment of Grievances

Grievances, disagreements or disputes arising out of the operation or interpretation of this Agreement, or concerning wages, hours of employment, or other conditions of employment, shall be handled and settled in the following manner, provided however, that the Union has the right to present such matters to the Company at any time without regard to this procedure:

(a) The employee(s) involved and the Union Shop Steward for that department shall jointly discuss the matter with the Company's departmental overseer in an endeavor to settle the same satisfactorily to the Union.

(b) If the complaint is not satisfactorily adjusted in this manner within forty-eight (48) hours, it shall be reduced to writing by the Union Shop Steward and/or the aggrieved employee(s) and submitted to the General Shop Committee of the Local Union, which committee shall not exceed (7) in number.

If a majority of the General Shop Committee believes that the complaint has merit, they shall deliver to the Company a written statement of the complaint, and, with or without the person or persons aggrieved, shall attempt to adjust the matter with the Company's Representative on the next regular day set aside for the handling of such matters: *Provided, however*, That all complaints brought before the Company's Representative must have been submitted to the Company in writing at least forty-eight (48) hours previous to such regular meeting. If not so presented, they shall be handled at the following regular meeting.

The Company's Representative shall meet with the General Shop Committee at least two times per month on regular meeting days, at approximately fifteen (15) day intervals, for the purpose of handling any complaint that the General Shop Committee may have to discuss. The Company's Representative shall promptly make decision on all complaints and deliver a written copy of same to the General Shop Committee.

(c) If the General Shop Committee and the Company's representative are unable to reach a satisfactory adjustment on any complaint, the issue(s) shall be referred to a representative of the Union who, with or without the General Shop Committee and the persons involved, shall promptly attempt to settle the matter with the Company's representatives.

(d) If the representatives of the Union and the representatives of the Company fail to promptly reach a satisfactory adjustment, the issue(s) shall be settled by arbitration as provided in Section 3 of this Agreement.

(e) Either party to this Agreement may, prior to a demand for arbitration as herein provided, request the Conciliation Service of the United States Department of Labor to send a Commissioner of Conciliation and/or one of its textile technicians, to assist in a settlement of the issues. In the event such request is made, the right of arbitration shall be postponed until the conciliation has become effective or until either party hereto may elect to refer the matter to arbitration and so indicates in writing to the other party.

Section 3.—Arbitration

If a satisfactory adjustment is not reached by the parties, then, and in that event, the issue or issues may be submitted to arbitration for settlement, as follows:

(a) *Selection of Arbiter.*—Within forty-eight (48) hours after written demand for arbitration served by either party upon the other, the two parties shall confer and endeavor to

select an arbiter. Should they be unable to mutually agree within twenty-four (24) hours, then either party may apply in writing (sending copy to other party) to the Director of Conciliation Service of the United States Department of Labor, who shall thereby, upon such application, be authorized to promptly furnish such impartial arbiter.

(b) *Arbitration Procedure.*—The arbiter shall promptly make such investigation, hear such testimony and consider such matters as may be material, and as promptly as possible, reach a decision. Both the Company and the Union shall be afforded a full opportunity to present such evidence as either may deem necessary, or as the arbiter may request or demand. If the arbiter needs the services of technical advisors, he shall secure such services from the Conciliation Service of the United States Department of Labor.

(c) *Findings and Decision.*—The decision of the arbiter, which shall include his findings of fact and conclusions, shall be binding on both the parties hereto and shall be conclusive of the controversy submitted.

(d) *Arbitration Expenses.*—The necessary expenses and fees of the arbiter, if any, shall be borne equally by Local Union No. ——— of Textile Workers Union of America, and the Company.

Section 4.—Changes in Work Assignments

The Company shall have the right to change or introduce machine processes and methods of manufacture for the purpose of insuring the efficient operation of the mill and without adversely affecting the employee's physical or mental condition or causing undue fatigue.

All changes in work assignments shall be described as belonging in one of the following three classes:

(a) *Routine Changes.*—Routine changes are those which result from alterations in construction of existing jobs and require no change in methods, machinery or equipment.

(b) *Technological Changes.*—Technological changes are those which result from change in equipment or machines used on the job.

(c) *Other Changes.*—All other changes which are neither routine nor technological in character.

1. *Routine Changes.*—The Company shall have the right to institute routine changes as conditions require, and shall notify the General Shop Committee of such alterations, which had not previously been reported, on a mutually agreed-upon form. Whenever requested by the General Shop Committee, there shall be discussion of such changes between the General Shop

Committee and management representatives. If any differences shall develop between the parties with respect to routine changes and which are not settled by mutual agreement, such differences shall be submitted for final and binding decision to arbitration, as provided in this Agreement.

2. *Technological Changes.*—The Company shall first inform the General Shop Committee of the fact that a change is to be made, of the approximate date of its installation, the nature thereof, proposed duties and job assignment, and the proposed rates and expected earnings on a mutually agreed-upon form. The General Shop Committee and the Company's representatives shall meet and discuss the proposal at least two (2) weeks before the day fixed for the institution of the trial period. The Company will furnish all information which is necessary to a complete understanding of the proposed change.

The Company may install the proposed change for a trial period of four (4) weeks which may be extended by mutual agreement. During such trial period, the employees shall be paid no less than their previous average hourly earnings for the previous quarter, as established by the Social Security records. In the event final agreement during, or subsequent to, the trial period results in higher rates of pay, the employees shall be paid retroactively to the date of assignment to the job. Within fifteen (15) days of the expiration of the trial period, the Local Union, if dissatisfied may present a written statement of its grievances, and if same shall not be satisfactorily adjusted by negotiations within five (5) days thereafter, the matter may be submitted by the Union, to arbitration for final and binding decision, as provided in this Agreement.

3. *Other Changes.*—There shall be no changes in established work assignments unless mutually agreed upon or made in accordance with the following procedure: The Company or the Local Union may request changes in established work assignments which are neither routine nor technological in character, and if, within fifteen (15) days after negotiations between the parties, upon such request, the parties shall be unable to agree, the matter may be submitted to arbitration by either party hereto for final and binding decision as to the proposed change and the applicable rates of pay.

Section 5.—Hours of Work, and Overtime Pay

(a) *Hours of Work.*—The normal hours of work shall be eight (8) consecutive hours per day for five (5) consecutive days per week, Monday to Friday, inclusive. For the purposes of this Agreement, the work week shall begin at ..... a. m. ..... and end at ..... a. m. the following .....

The employees shall be considered called to work each day of the normal workweek, unless excused in accordance with the terms of this Agreement. They will also be considered called to work on the sixth day of the workweek, if scheduled. Each employee shall be permitted to work on his or her job if it runs, except as otherwise provided herein.

(b) *Overtime Pay.*—The Company agrees to pay one and one-half times the regular rate of pay for time worked in excess of eight (8) hours per day and forty (40) hours per week, and for all time worked on the sixth day worked in any workweek. Double the regular rate of pay shall be paid for all time worked on the seventh day worked in any workweek.

Insofar as is not in conflict with governmental orders, time lost from work because no work is available to the employee or for justified absences shall be counted as time worked in computing the sixth and seventh days worked in the workweek.

Overtime pay shall not be pyramided.

Section 6.—Reporting Pay

Any employee or employees reporting for work on their regularly scheduled shift, or at the request of the Company, without at least sixteen (16) hours' prior notice that their services will not be needed, and who are not put to work, shall be paid four (4) hours' reporting pay, at their then prevailing rate of pay. Such employees who are put to work shall be guaranteed a minimum of eight (8) hours' pay, unless they quit or voluntarily lay-off or are laid-off by reason of emergency forced closedowns beyond the Company's control and involving the entire plant.

Section 7.—Holidays

The following days shall be observed as holidays, with full pay: New Years' Day, July Fourth, Thanksgiving Day, National Memorial Day, Labor Day, Christmas Day.

If any of these designated holidays fall on a Sunday, the following Monday shall be observed as the holiday. The Company agrees that one and one-half times the regular rate of pay shall be paid for time worked on any of these holidays. Premium wage compensation due an employee for time worked on any of these holidays shall not be offset or credited against any other premium wage compensation due such employee under the terms of this Agreement. Holidays shall be counted as regular days worked in computing the sixth and seventh days worked in the workweek.

The Company agrees to notify employees at least three (3) days in advance of the intention of the Company to operate the plant or any part thereof, on any of the above holidays.

Section 8.—Seniority

(a) *Definition and Purpose.*—Seniority is defined as the length of an employee's service with the Company, dating from the date of last employment by the Company, except as otherwise provided herein; the purpose of which is to provide a declared policy of right of preference measured by such length of service.

(b) *Lay-offs and Recalls.*—Seniority within departments in lay-offs and recalls shall prevail, provided the employee retained or recalled can qualify to fill the position.

Members of the General Shop Committee shall head the seniority roster for the purposes of lay-offs and recalls.

New jobs or vacancies in any department shall be offered to those employees who have been laid off before new employees are hired for such positions: *Provided, however,* Such employees can qualify to fill the position.

(c) *Area of Seniority.*—For the purposes of this Agreement, the Company's departments are as follows:

(d) *Job Vacancies.*—Whenever a job vacancy arises, notice thereof shall be posted and maintained on the room bulletin board, by the Overseer of that department, for a period of three (3) working days. Any employee within the department who desires the job may bid on it in writing, in duplicate, within such time, by giving a copy of his bid to the Overseer and Shop Steward of that department. The employee so bidding who has greatest seniority and who can qualify to perform the work, shall be given the job immediately following a conference between the Overseer and Shop Steward. During the three-day period while the job is posted, the Company shall temporarily fill it as provided in subsection (e) hereinafter.

(e) *Temporary Vacancies.*—A temporary vacancy shall be offered to the senior spare employee of the department who is qualified and available to fill such temporary vacancy. If the senior spare employee declines the vacancy, it shall be offered to the other qualified and available spare employees in the order of their seniority standing. Should none of such spare employees wish the temporary vacancy, then the Company may require the one with lowest seniority standing to fill the vacancy. Any spare employee assigned to a temporary vacancy

may remain on this assignment until the return of the regular employee, except as otherwise provided herein.

(f) *Permanent Transfers.*—Permanent transfers of employees from one department to another will only be made by mutual consent of the employees affected and the Company, while in the presence of the departmental Shop Steward. Such transferred employees will retain seniority in the department transferred from for thirty (30) calendar days, during which time he or she may return to his or her old job if desired, or may be returned to such job by the Company without affecting his or her seniority rating. However, if transferred employee remains in the department transferred to, his or her seniority rating in that department shall date as of the date of transfer.

(g) *Temporary Transfers.*—The Company may, if necessary, make temporary transfers from one job to another or from one department to another of not longer than a weeks' duration: *Provided however,* That the higher rate of pay of the two jobs involved shall prevail, and under no circumstances shall an employee suffer a reduction in earnings as a result of such temporary transfer: *Provided further,* That there will not be over one (1) such transfer required of any employee within any thirty (30) day period. Such transfers shall be without prejudice and shall take into consideration seniority and the wishes of the employees involved.

(h) *Seniority Rosters.*—The Company shall post and maintain on the bulletin board in each department the seniority roster for that department, showing the current seniority standing of each employee, and shall furnish the General Shop Committee copies of all such rosters. The Company shall correct these rosters at least every thirty (30) days. Any appeals from the seniority rosters as posted shall be made through the regular grievance procedure within thirty (30) days of the posting; otherwise, the rosters shall be considered correct, indisputable errors excepted.

Section 9.—Leaves of Absence

Employees desiring leave of absence shall request the same from their immediate Supervisor or the Overseer of the department in which they work, and if for more than one day, the request shall be in writing on an agreed-upon form furnished by the immediate Supervisor or Overseer for that purpose. The Supervisor or Overseer shall immediately furnish the departmental Shop Steward with a copy of the request with his written decision thereon. The request shall state for what purpose and to what date the leave of absence is desired, which shall not

exceed thirty (30) days' duration, except as hereinafter provided.

Leaves of absence shall be granted for the following reasons:

(1) Illness—for duration of the illness;

(2) Pregnancy—for the duration of the pregnancy and for such reasonable time thereafter as would enable the employee to return to work with safety to herself and her child;

(3) Union business—until completion of such business;

(4) To represent the National Union for as long as serving in that capacity.

Employees absent from work by reason of illness or other reasonable cause shall endeavor to notify their immediate superior or the Company at least two (2) hours prior to the beginning of their next regular shift, shorter notification to be permitted in cases of emergency. Any proper notice of emergency absence shall constitute application for leave of absence.

Application for extension of leave of absence shall be made in the same way as provided for in original application.

Section 10.—Military Service

Employees inducted into the service of the armed forces of the United States as a result of enlistment, draft or otherwise, or labor service under the selective draft or conscriptive service shall be considered on leave of absence and if such employee(s) applies for their former job(s) within ninety (90) days after honorable discharge or other satisfactory completion of service, the Company, if such employee(s) is still qualified to perform the duties of such job and if working conditions then permit, will restore the employee(s) to their former, or a substantially similar job. No employee will lose seniority rating by reason of service in the armed forces, or in the selective service draft of the United States, and time spent in such service by an employee shall be counted as time worked for the Company for the purpose of determining seniority ratings.

Upon entering military service and upon proof of acceptance by the Military Authorities, each employee who has acquired a service record of one (1) year or more with the Company shall receive a bonus of two (2) weeks' pay in addition to his earned pay to such date. Such bonus shall be computed on the average hourly earnings of the employee for the last four (4) weeks worked immediately preceding the date of the bonus. In addition, each employee shall receive the proportionate share of his vacation pay which shall have accrued to him upon entering military service.

Section 11.—Union Security

(a) *Union Shop.*—All employees shall be and remain members of the Union in good standing as a condition of employment with the Company for the duration of this agreement or any renewal thereof.

(b) *Check-off.*—The Company shall deduct weekly from the pay of each employee member of the Union the amount due the Union for dues and initiation fees, and shall remit such monies to the Financial Secretary of the Local Union not later than the tenth day of the following month. No dues deductions will be charged against any employee for any week in which the employee does not earn pay except vacation weeks.

Section 12.—Vacation With Pay

The Company shall grant Vacations with Pay for 1945 and thereafter (a) for those employees of one year but less than five years' service on June 1st, one week's vacation with pay equal to 2% of the employee's total earnings, for the twelve months' period next preceding such date, or forty (40) hours' pay, whichever is greater; (b) for those employees with as much as five years' service on June 1st, two weeks vacation with pay equal to 4% of such earnings or 80 hours pay, whichever is greater; (c) for those employees with service of less than one year but more than three months, 2% of total earnings as vacation pay. The vacation period shall be from July 1st to Labor Day. The vacation pay shall be paid not later than the week-end immediately preceding the start of the vacation. If vacations are granted for a period extending through one or more of the paid holidays established by this Agreement, the holiday pay shall be paid in addition to the vacation pay. The Company shall have the right to set the time during the vacation period when the vacation shall be granted and shall give due consideration to the desires of the employees as expressed through their Union representatives. Employees who are laid off or who terminate their employment after June 1st and prior to receiving their vacation pay, shall be paid such pay at time of lay-off or termination of employment.

Section 13.—Severance Pay

The Company shall pay separation allowances to employees displaced by technological changes upon the following terms and conditions:

Any employee shall be considered displaced by technological change when his or her services shall no longer be required as

a result of a change in plant or equipment or a change in process or method of operation, diminishing the total number of employees required to operate the department in which he or she is employed.

Displacement by technological changes shall not mean or include any jobs temporarily discontinued because of trade conditions such as lack of demand for any of the products the Company may have been at any time manufacturing.

Should displacements be made because of technological changes, an employee so displaced shall be given the option for one week of becoming a displaced employee with the benefits provided under the terms of this Agreement or being transferred according to seniority to the furlough list.

All displacements shall be in accordance with seniority.

In case of discontinuance of jobs by reason of technological changes as defined above, the Company shall pay to employees so displaced separation pay in an amount equivalent to two (2) weeks' pay for each year of the employee's past continuous employment with the Company.

Separation allowance shall be due and payable to the displaced employee immediately upon separation, or if furloughed employee, upon notice of separation.

Section 14.—Wages

(a) *Minimum Wage.*—It is agreed that each employee, except learners, and handicapped persons, shall be granted and paid for each days' work and an amount not less than 65¢ minimum multiplied by the number of straight-time hours worked on that day.

(b) *Wage Scale.*—The wage scale mutually agreed upon or awarded under the terms of this Agreement shall be by departments and occupations, including hourly rates, piece and incentive rates, the guaranteed hourly minima for piece and incentive rate jobs, and the expected earnings, and shall be dated, initialed by the parties, attached hereto and made a part of this Agreement, subject to change as herein provided. Any amendments or changes in the wage scale shall be by mutual consent, by order of the National War Labor Board or made in accordance with the terms of this Agreement and shall also become a part of this Agreement as above provided.

A properly balanced and aligned wage rate structure shall be negotiated based on the key occupational wage rates established as guide posts in the February 20, 1945 Directive Order of the National Labor Relations Board in the matter of the 23

Southern Cotton Textile Companies and the Textile Workers Union of America, CIO. Once such negotiations are completed and the rate structure approved a general 10¢ an hour wage increase, retroactive to the date of the signing of this Agreement shall be put into effect.

(c) *Learners.*—The starting rate for new inexperienced employees shall be fifty-five (55) cents per hour for the first three (3) weeks of employment, sixty (60) cents per hour for the following three (3) weeks, and sixty-five (65) cents per hour thereafter, as a minimum rate. Learners placed on piece or incentive rate jobs during the learning period shall be paid their piece or incentive rate earnings or the learner rate provided for in this Section whichever if the greater.

(d) *Shift Differentials.*—The regular rate of pay for time worked during the second shift hours shall be 5¢ per hour above the regular day rate. The regular rate of pay for time worked during the third shift hours shall be 7¢ per hour above the regular day rate.

(e) *Piece and Incentive Work Guarantees.*—A guaranteed occupational minimum hourly rate of pay, calculated on a daily basis, shall be paid for each job compensated in whole or in part on a piece or incentive rate basis. Piece and incentive rates for each different type of construction in each occupation shall be sufficient to yield not less than the expected earnings for the job and such rates shall be kept posted in the department at all times. Piece and incentive rate employee's production and earnings shall be determined and daily and the records shall be posted in the department within twenty-four (24) hours.

The Company shall, upon requet, promptly furnish the Union with the average hourly earnings of any individual employee or group of employees working on piece or incentive rate jobs.

(f) *Down Time.*—Employees required to wait for supplies or materials or because of repairs on machines or equipment, or because of power shut-downs or machine overhauls, or changes in work or any other cause beyond the employee's control, shall be paid their average hourly earnings. Any employee whose normal earning capacity is affected adversely because of faulty materials, equipment, or supplies, shall be compensated at not less than his or her normal average earnings for all time worked while such conditions exist.

(g) *Lunch Period Pay.*—Each employee on each shift shall each day receive a thirty (30) minute lunch period, with full pay, during which time they shall perform no work.

(h) *Payment of Wages.*—Payment of wages shall be made on

the job not later than ..... of each week and shall be in cash or pay check, with recognition for legitimate deductions.

(i) *Wage Adjustments.*—Either party to this Agreement may propose to the other at any time adjustments in rates of pay or wages by giving to the other party written notice of the adjustments proposed, whereupon the parties will meet promptly for discussion and will endeavor in good faith to reach an agreement. If agreement is not reached within fifteen (15) days from the service of the written notice aforesaid, then either party may demand arbitration of the issue or issues as provided in Section 3 of this Agreement: *Provided, however,* That so long as the National War Labor Board remains in existence, disagreements arising from proposals for general wage adjustments shall not be subject to arbitration, but shall be referred to said Board for final and binding decision as to the controversy submitted.

Section 15.—Social Services

(a) The Company agrees to institute a program of social insurance, the premium of which is to be paid entirely by the Company.

(b) The Company and the Union agree that the cost of these insurances shall not exceed 2% of the total payroll for the preceding calendar year covering all of the employees under the jurisdiction of this Agreement.

(c) Any employee who has acquired, or who in the future acquires, a three (3) months' service record or more shall be entitled to the following insurance coverages.

(d) The Company shall purchase all or any part of the following coverages, depending on the cost:

1. A $500.00 life insurance policy.
2. Hospitalization for each worker and his dependents.
3. $100.00 surgical aid for each employee.
4. A $15.00 accident and sick benefit for thirteen (13) weeks in any one sick or accident period, benefits to begin after the seventh (7th) day of accident or sickness.

(e) Former employees returning from the armed services shall be required to wait not more than three (3) months before being covered by these insurances.

(f) The Union shall be permitted to select the types of insurance and the insurance company who is to write the policy for the employees of the herein named Company.

(g) Upon the termination of employment of any employee, the Company will not be required to continue payments of premiums for the above-mentioned insurance program and said employee shall be dropped from the list of insurables.

Section 16.—Shop Rules

All working rules or Shop Rules concerning wages, hours, and/or other conditions of employment, shall be mutually agreed to and shall be conspicuously posted in all departments at all times.

Section 17.—Bulletin Boards

The Company agrees to provide adequate bulletin boards at locations in each department where it will be reasonably convenient for employees to observe them, and will allow the Local Union the use of such bulletin boards.

Section 18.—Safety and Health

The Company agrees to make all reasonable provisions for the safety and health of the employees during the hours of their employment. The Union agrees to promote in every way possible the realization of the responsibility of the individual employee with regard to preventing accidents to himself or his fellow employees during the hours of their employment.

Section 19.—Strikes and Lockouts

The Union and the employees agree that, for the duration of this Agreement or any renewal thereof, there shall be no calling, authorization or condoning of strikes, or any acts of similar nature to interfere with production, nor picketing of any kind or form whatsoever, however peaceable; and the Company agrees that there shall be no lock-out for the duration of this Agreement or any renewal thereof.

Section 20.—Good Faith

Any employee, supervisory employee or otherwise, who wilfully violates or advocates the violation of this Agreement, shall, upon the presentation of reasonable proof by either party to the other, be adequately disciplined on first offense, and on second offense, shall be discharged by the Company and will be reemployed only by mutual consent of the parties hereto.

Section 21.—Separability

This Agreement is made in the full belief by both parties hereto that it is in every respect legal, and shall not be affected by any change in legal status, ownership, or management of the Company. If, at any time, any Section, clause, or sentence or part of this Agreement shall be or become invalid or unen-

forceable by reason of any mandatory Federal Law now existing or hereafter enacted, or by Executive Order of the President, such invalidity or unenforceability shall not affect the remainder of the provisions hereof, and the parties agree to meet for the purpose of negotiating any changes that may be necessary to bring such Section, clause or sentence, or part of this Agreement within the scope of such legal requirements.

Section 22.—Duration or Renewal

This Agreement shall be in effect for a period of one (1) year, and shall automatically renew itself from year to year thereafter, except that either party may terminate it at the end of any such year by giving to the other party written notice not more than 45 days nor less than 30 days before the end of such year. Such notice shall be sent by registered mail to the Agent or General Manager of the Company at Griffin, Georgia, or the Textile Workers Union of America, CIO at 75 Ivy Street NE., Atlanta 3, Georgia, as the case may be, and if served by the Company a copy of said notice shall also be sent by registered mail to the President of the Textile Worker's Union of America, CIO, Local Union No. ———, Griffin, Georgia.

In witness whereof, the parties hereto have executed this Agreement under their respective names by their authorized representative the day and year first above written.

CROMPTON-HIGHLAND MILLS, INC.

By ——— ———.

TEXTILE WORKERS UNION OF AMERICA, CIO.

By ——— ———, *Representative.*

Ratified and approved by: Local Union No. ———:

——— ———,
——— ———,
——— ———,
——— ———,
——— ———,
Committee.

Approved by:

——— ———, *Regional Director.*

BOARD'S EXHIBIT 14

TEXTILE WORKERS UNION OF AMERICA

WAGE PROPOSAL TO CROMPTON-HIGHLAND MILL, GRIFFIN, GA., NOVEMBER 8, 1945

Plant Minimum $0.60 per hour.

Job	Base 60-point hour	Base 80-point hour	Guaranteed daily minimum	Hourly rate
Card Room:				
Picker Tender	$0.61½	$0.82	$0.61½	
Card Tender	61½	.82	61½	
Lapper Tender	61½	.82	61½	
Comber Tender	.65	.87	.65	
Drawing Tenders	.65	.87	.65	
Slubber Tenders	72½	.96	72½	
Intermediate Tenders	72½	.96	72½	
Intermediate and Speeders	72½	.96	72½	
Card Grinder	82½	1.10	82½	
Roving Hauler	57½	.75	57½	
Oiler	61½	.82	61½	
Sweeper				$0.55
Drawing Hauler				57½
Opener Room Man				61½
Janitor				.55
Spinning room:				
Spinners	.65	.87	.65	
Filling Doffers:				
Fine Yarn	.70	.94	.70	
Coarse Yarn	.68	.91	.68	
Warp Doffer	.68	.91	.68	
Roll Picker	61½	.82	61½	
Warper Tender	.68	.91	61½	
Winder Helper and Tender	61½	.82	61½	
Winder Fixer	82½	1.10	82½	
Conditioning Machine Man	61½	.82	61½	
Oiler	61½	.82	61½	
Roving Hauler	57½	.75	57½	
Creeler	61½	.82	61½	
Overhauler				1.00
Pice Collector				.60
Humidifer Man				.60
Sweeper				.55
Quill Painter				.60
Yarn Boy				57½
Weave room:				
Weaver	.80	1.06	.80	
Loom Fixer	.95	1.25	.95	
Battery Filler	58½	.78	58½	
Warp Man	.60	.80	.60	
Tying-in Machine Operator	.85	1.15	.85	
Cloth Doffer	.60	.80	.60	
Slasher Tender	.80	1.06	.80	
Slasher Helper	.68	.91	.68	
Quill Machine Operator	61½	.82	61½	
Loom Cleaner	57½	.75	57½	
Oiler	61½	.82	61½	
Drawing-in hand	.68	.91	.68	
Head Inspector				.94
Overhauler				1.00
Change Man				87½
Filling Hauler				.63
Smash Hand				.75
Inspector				.80

Job	Base 60-point hour	Base 80-point hour	Guaranteed daily minimum	Hourly rate
Weave room—Continued				
Pick Out Man				$.65
Humidifier Man				.60
Cloth Hauler				.60
Elevator Man				.58½
Sweepers				.55
Drop Wire Girls				.61½
Quill Gatherers				.57½
Scrubber				.55
Filling Inspector				.61½
Cloth Room:				
Face Inspectors	$0.65	$0.87	$0.65	
Preinspectors	.65	.87	.65	
Back Inspectors	.65	.87	.65	
Turnover Folder	.65	.87	.65	
Shear Operator	.65	.87	.65	
Folder, Weigher, and Marker	.65	.87	.65	
Bale Press Weigher	.61½	.82	.61½	
Grader	.65	.87	.65	
Roll Grader Machine	.65	.87	.65	
Move Man				.61½
Creeper Hand				.61½
Sweeper				.55
Stockroom:				
Stockroom and Order Man				.70
Stockroom Men				.57½
Warehouse Men				.60
Maintenance:				
Maintenance, Class B				.85
Electrician, Class B				.85
Carpenter				.85
Outside Labor				.55
Fireman				.65
Fireman				.65
Watchman				.60

Learners Clause.—Inexperienced employees are to be hired in at the rate of 50¢ per hour; after three weeks, the rate is to be 55¢ per hour; and after six weeks the rate shall be 60¢ per hour, it being understood that if any worker earns more than the learner's rate on an incentive job, he is to receive the amount of his earnings.

All workers are to receive a 5¢ per hour increase, this 5¢ per hour increase to be incorporated in the 60-point hour base rate for all incentive workers.

All Spare Hands are to be paid the job guaranteed minimum or their earnings, whichever is higher.

All jobs not yet on incentive system are to be paid the base rate on a 60-point hour basis until the job is put on an incentive system.

BOARD'S EXHIBIT 15

TEXTILE WORKERS UNION OF AMERICA

WAGE PROPOSAL TO CROMPTON-HIGHLAND MILL, GRIFFIN, GA., DECEMBER 19, 1945

Plant Minimum $0.60 per hour.

All rates listed below are to be increased 5¢ per hour for straight time workers, and 5¢ per hour increase is to be incorporated in 60-unit hour rates for all incentive workers.

All production over 60 units is to be paid on a straight production basis.

All spare hands are to be paid the job rate guaranteed minimum or their earnings, whichever is higher.

All jobs not yet on incentive system are to be paid the base rate on a 60-unit hour basis until the job is put on an incentive system.

Learners' Clause.—Inexperienced employees are to be hired in at the rate of 50¢ per hour; after three weeks, the rate is to be 55¢ per hour; and after six weeks the rate shall be 60¢ per hour, it being understood that if any worker earns more than the learner's rate on an incentive job, he is to receive the amount of his earnings.

Job	Base 60-unit hour	Guaranteed daily minimum	Hourly rates
Card Room:			
Picker Tender	$0.61½	$0.61½	
Card Tender	.61½	.61½	
Lapper Tender	.68½	.61½	
Comber Tender	.68	.65	
Drawing Tenders	.61½	.61½	
Slubber Tenders	.72½	.68	
Intermediate Tenders	.72½	.68	
Speeder Frame Tenders	.70	.65	
Card Grinder	.82½	.82½	
Roving Hauler	.57½	.57½	
Oiler	.61½	.61½	
Sweeper			$0.55
Drawing Hauler			.57½
Opener Room Man			.61½
Janitor			.55
Spinning Room:			
Spinners	.65	.61½	
Doffers	.68	.65	
Roll Picker	.57½	.57½	
Warper Tender	.65	.65	
Winder Helper	.60	.60	
Winder Tender	.61½	.61½	
Winder Fixer	.82½	.82½	
Conditioning Machine Man	.61½	.61½	

Job	Base 60-unit hour	Guaranteed daily minimum	Hourly rates
Spinning Room—Continued			
Oiler	$0.61½	$0.61½	
Roving Hauler	.57½	.57½	
Creeler	.61½	.61½	
Overhauler			$0.95
Piece Collector			.60
Humidifier Man			.65
Sweeper			.55
Quill Painter			.57½
Yarn Boy			.57½
Weave Room:			
Weaver	.80	.75	
Loom Fixer	.95	.95	
Battery Filler	.58½	.58½	
Warp Man	.80	.75	
Tying-in Machine Operator	.85	.80	
Cloth Doffer	.60	.60	
Slasher Tender	.80	.80	
Slasher Helper	.68	.68	
Quill Machine operator	.58½	.58½	
Loom Cleaner	.57½	.57½	
Oiler	.61½	.61½	
Drawing-in hand	.68	.65	
Head Inspector			1.00
Overhauler			.95
Change Man			.82½
Filling Hauler			.57½
Smash Hand			.75
Inspector			.75
Pick out hand			.68
Humidifier Man			.65
Cloth Hauler			.58½
Elevator Man			.58½
Sweepers			.55
Drop Wire Girls			.61½
Quill Gatherer			.57½
Scrubber			.55
Filling Inspector			.61½
Cloth Room:			
Face Inspectors	.61½	.61½	
Preinspectors	.61½	.61½	
Back Inspectors	.61½	.61½	
Turnover Folder	.61½	.61½	
Shear Operator	.61½	.61½	
Folder, Weigher & Marker	.65	.65	
Bale Press Weigher	.65	.65	
Grader	.65	.65	
Roll Grader Machine Operator	.65	.65	
Move Man			.61½
Creeper Hand			.61½
Sweeper			.55
Stockroom:			
Stockroom and Order Man			.70
Stockroom Men			.57½
Warehouse Men			.60
Maintenance:			
Maintenance Class B			.85
Electrician, Class B			.85
Carpenter			.85
Outside Labor			.55
Fireman			.65
Watchman			.60

BOARD'S EXHIBIT 16

TEXTILE WORKERS UNION OF AMERICA

WAGE PROPOSAL TO CROMPTON-HIGHLAND MILL, GRIFFIN, GA., JANUARY 19, 1946

Plant Minimum, $0.60 per hour.

Job	Present rate per point	Present 60-point rate	Present guaranteed minimum	Union proposal	
				60-point rate	Guaranteed daily minimum based on 66-point hour
Card Room:					
Picker Tender	$0.009	$0.54	$0.59	$0.665	$0.726
Card Tender	.0095	.57	.59	.665	.726
Lapper Tender	.0095	.57	.59	.665	.726
Comber Tender	.0095	.57	.59	.73	.792
Drawing Tender	.0102	.612	.6325	.665	.726
Slubber Tender	.0102	.612	.6325	.775	.8514
Intermediate Tender	.0102	.612	.6325	.775	.8514
Speeder Tender	.0102	.612	.6325	.75	.825
Card Grinder	.0073	.4380	.775	.875	.957
Roving Hauler	.0073	.4380	.59	.625	.693
Oiler	.0095	.57	.59	.665	.726
Drawing Hauler	.0073	.4380	.59	.625	.693

Pay work jobs	Present hourly rate	Union proposed hourly rate
Janitor	$0.55	$0.60
Sweeper	.55	.60
Opener Room Man	.59	.665

Job	Present rate per point	Present 60-point rate	Present guaranteed minimum	Union proposal	
				60-point rate	Guaranteed daily minimum based on 66-point hour
Spinning room:					
Spinners	$0.0095	$0.57	$0.645	$0.70	$0.765
Doffers:					
Fine	.0105	.63	.65	.73	.792
Coarse	.010	.60	.62	.73	.792
Warp Doffer	.010	.60	.655	.73	.792
Roll Picker	.0087	.522	.69	.625	.693
Warper Tender	.010	.60	.62	.70	.765
Winder Tender	.0091	.546	.59	.665	.726
Winder Helper	.0061	.366	.59	.65	.712
Winder Fixer	.0048	.288	.775	.875	.957
Conditioning Machine Operator	.0081	.486	.62	.665	.726
Oiler	.0095	.570	.59	.665	.726
Roving Hauler	.0081	.486	.59	.625	.693
Creeler	.0091	.546	.59	.665	.726

Day work jobs	Present hourly rate	Union proposed hourly rate
Overhauler	$0.84	$1.00
Piece Collector	.62	.65
Humidifier Man	.595	.70
Sweeper	.55	.60
Quill Painter	.55	.625
Yarn Boy	.55	.60
General Hands	.55	.60

Job	Present rate per point	Present 60-point rate	Present guaranteed minimum	Union proposal	
				60-point rate	Guaranteed daily minimum based on 66-point hour
Weave Room:					
Weaver	$0.0105	$0.63	$0.695	$0.85	$0.924
Loom Fixer	.013	.78	.895	1.00	1.055
Oiler	.0095	.57	.595	.665	.726

Day work jobs	Present hourly rate	Union proposed hourly rate
Battery Filler	$0.59	$0.635
Warp Man	.59	.85
Tying-in Machine Operator	.775	.90
Drawing-in Hand	.668	.73
Cloth Doffer	.595	.65
Slasher Tender	.735	.85
Slasher Helper	.595	.73
Quill Machine Operator	.595	.635
Loom Cleaner	.59	.625
Head Inspector	.96	1.05
Overhauler	.895	1.00
Change Man	.78	.875
Filling Hauler	.67	.72
Smash Hand	.668	.80
Inspector	.668	.80
Pick-out Hand	.668	.73
Humidifier Man	.595	.70
Cloth Hauler	.595	.635
Elevator Man	.595	.635
Filling Inspector	.595	.665
Drop Wire Hands	.59	.665
Quill Gatherer	.59	.625
Sweepers	.55	.60
Scrubbers	.55	.60

Job	Present rate per point	Present 60-point rate	Present guaranteed minimum	Union proposal	
				60-point rate	Guaranteed daily minimum based on 60-point hour
Cloth room:					
Face Inspector	$0.0105	$0.63	$0.595	$0.665	$0.726
Preinspector	.0105	.63	.64	.665	.726
Back Inspector	.0105	.63	.66	.665	.726
Turn-over Folder	.0105	.63	.59	.665	.726
Shear Operator	.010	.60	.62	.665	.726
Folder, Weigher, and Marker	.010	.60	.65	.700	.765
Marker	.0105	.63	.65	.665	.726

Day work jobs	Present hourly rate	Union proposed hourly rate
Move Man	$0.6425	$0.665
Creeper Hand	.635	.665
Bale Press Operator	.665	.70
Stockroom, Shop, and Yard:		
Stockroom and Order Man	.74	.75
Stockroom and Order Man 2nd and 3rd Shifts	.60	.625
Maintenance	.85	.90
Electrician	.85	.90
Carpenter	.74	.90
General Hand	.64	.75
Outside Labor	.55	.60
Firemen	.59	.70
Watchmen	.60	.65
Painter	.745	.85
Painter Helper	.735	.85

RESPONDENT'S EXHIBIT 1

CROMPTON-HIGHLAND MILLS

SUMMARY OF AVERAGE EARNINGS UNDER INCENTIVE SYSTEM (BASED ON A PERIOD OF FOUR CONSECUTIVE WEEKS) OCTOBER 26TH, 1945

CARD ROOM

	Average	Low		High		Number of employees
Picker Tenders	$0.574	$0.55	$0.559 $0.56	$0.587	$0.588 $0.596	3
Card Tenders	.726	.658	.70 .704	.734	.742 .757	8
Oilers	.656	.626	.627 .629	.67	.676 .677	2
Comber Tenders	.691	.677	.618 .600	.719	.709 .708	3
Lapper Tenders	.679	.599	.587 .585	.824	.745 .735	3
Drawing Tender	.652	.592	.593 .593	.712	.717 .735	6
Slubber Tender	.722	.665	.674 .68	.745	.758 .763	8
Intermediate Tender	.781	.721	.730 .784	.785	.806 .816	6
Intermediate and Speeders (Combination Jobs)	.791	.724	.751 .755	.794	.804 .821	3
Card Grinders	.771	.758	.766 .767	.783	.784 .791	5

SPINNING ROOM

Spinners	$0.692	$0.585	$0.605 $0.606	$0.78	$0.786	$0.807	41
Doffers—All	.733	.61	.632 .656	.814	.816	.831	23
Doffers:							
Fine Yarn	.717	.689	.703 .718	.718	.741	.761	3
Coarse Yarn and Warp	.719	.703	.719 .720	.722	.723	.748	20
Roll Pickers	.628	.55	.561 .563	.693	.70	.776	12
Winder Helpers	.568	.55	.56 .566	.584	.493	.60	2
Winder Tenders	.596	.55	.551 .553	.683	.688	.697	12
Conditioner Machine man	.659	.55	.551 .573	.709	.716	.723	3
Oilers	.673	.654	.653 .656	.676	.682	.683	3
Roving Haulers	.661	.55	.56 .635	.696	.709	.723	3
Warper Tender	.675	.597	.619 .626	.705	.725	.750	2
Winder Fixer	.750	.747	.749		.751	.752	1

WEAVE ROOM

Weavers	$0.722	$0.655	$0.656 $0.657	$0.813	$0.825	$0.829	51
Fixers	.883	.855	.857 .858	.943	.958	.962	20

CLOTH ROOM

Trimmers and Inspectors:							
Face	$0.693	$0.595	$0.615 $0.619	$0.754	$0.761	$0.762	19
Pre	.729	.726	.723 .724	.732	.740	.749	2
Back	.751	.673	.699 .711	.779	.793	.836	3
Turn-over Folder	.705	.698		.705	.713		1
Shear-Operator	.691	.682	.683	.688	.714		1
Folder	.725	.725		.725			3
Grader	.6025	.6025		.6025			1

RESPONDENT'S EXHIBIT 2

AMENDMENT OF COMPANY COUNTERPROPOSAL, OFFERED 10–18–45, FORMALLY SUBMITTED 11–7–45

Article IV.—Wage Rates and Work Assignments

SECTION 1. *Wage Rates and Earnings.*—A schedule of the hourly, incentive, and guaranteed minimum wage rates which have been agreed upon between the parties is attached hereto as Exhibit "A" hereof. It is mutually agreed that the guaranteed minimum rates which are provided for in said schedule shall be applied on a daily basis; that the incentive rates which, as shown by said schedule, have been established but not yet applied, shall be applied as promptly as is feasible; and that the rates and earnings as shown by said schedule, will not be increased or reduced during the term of this Contract unless a general increase or reduction in wage rates is mutually agreed upon in collective bargaining. Copies of the wage schedule applicable to the employees in each Department will be posted on the bulletin board for each Department. Earnings records will be posted on the bulletin board for each Department as promptly after the completion of each day's work as the necessary computations can feasibly be made; and full information as to the average hourly earnings of any group of employees will, upon request be furnished to said employees, or to the Union as to their agent, at reasonable times and intervals.

SECTION 2. *Reopening for Bargaining with Respect to Wages.*—Either party may, but not more than once during the term of this Contract, reopen the matter of wages for further collective bargaining by proposing to the other party a general increase or decrease in wage rates, it being agreed that matters pertaining to rates of pay and wages are proper subjects for collective bargaining but not of arbitration, and that the provisions of this Contract with respect to grievances and arbitration shall not, in any event, be applicable to any dispute or disagreement with respect to rates of pay or wages, and that any general adjustment of wage rates, whether up or down, shall be effective as of the workweek commencing nearest to the date on which said adjustment is agreed upon in collective bargaining.

SECTION 3. *Establishment and Adjustment of Point Plan Standards and Work Assignments.*—The Company has, and shall continue to have the right to establish, correct and adjust point standards and work assignments under the established Point Plan of incentive wage payment; but it is expressly agreed that any point standard or work assignment heretofore or hereafter established by the Company may, upon request, be studied and checked by competent engineers designated and employed by the Employees through the Union as their collective bargaining representative. Pending application of the procedures herein provided for, the Employees shall accept and abide by the point standards heretofore and hereafter established by the Company, and shall, in good faith, accept and endeavor to fully perform the work assignments heretofore and hereafter established by the Company; and any employee who shall fail or refuse to do so shall be subject to discharge.

The engineers designated by the Company and by the Employees shall, in mutual good faith and without prejudice or partiality, endeavor to reach agreement with respect to any questioned point standard or work assignment. A tentative point standard or work assignment may be agreed upon between said engineers for a trial period of an agreed length, subject to later review and further consideration, but any firm agreement between the engineers designated by the Company and by the Employees shall be reduced to written memorandum and shall be binding upon the Company and upon the Employees unless and until a significant change in job specifications shall occur. Any point standard or work assignment established by the Company may be changed by the Company at any time before a final agreement with respect thereto is reached by the engineers designated by the Company and by the Employees.

If the engineers designated by the Company and by the Employees shall be unable to reach a mutually satisfactory agreement with respect to any point standard or work assignment heretofore or hereafter established by the Company, the parties shall mutually request the Director of the Conciliation Service of the United States Department of Labor to assign a competent, qualified, textile technician from the staff of said Conciliation Service to study the job and endeavor to conciliate the differences between the engineers designated by the Company and by the Employees.

If the parties, through their respectively designated engineers, shall still be unable to reach agreement with respect to any point standard or work assignment heretofore or hereafter established by the Company, either party may submit the issue as to the reasonableness and correctness of said point standard

or work assignment to final and binding arbitration in the manner hereinafter provided, to wit:

The party desiring to submit said issue to arbitration shall give the other party written notice of such desire and shall thereupon name its Arbitrator. The other party shall, within two days after the receipt of said notice, name its Arbitrator; and the two Arbitrators so named shall endeavor to select a qualified, independent, impartial, practicing industrial engineer to act as the Chairman of said Board of Arbitration. If the Arbitrators designated by the parties shall be unable to promptly agree upon an engineer to serve as the Chairman of said Board of Arbitration, the parties shall mutually request the American Arbitration Association to name five independent, impartial, qualified, practicing industrial engineers to serve as the Chairman of said Board of Arbitration. The Union shall strike two of the persons so named and the Company shall strike two of the persons so named, and the fifth or remaining person shall be the Chairman of said Board of Arbitration.

The hearings and sessions of said Board of Arbitration, unless otherwise mutually agreed, shall be held in Spalding County, Georgia; and both parties shall be given ample notice of all hearings and sessions, and shall be afforded ample opportunity to present evidence and contentions pertinent to the reasonableness and correctness of the point standard or work assignment in question.

The decision and award of said Board of Arbitration shall be limited to findings and conclusions with respect to the reasonableness and correctness of the point standard or work assignment in dispute, and subject to that limitation, a decision of a majority of said Board of Arbitration shall be binding upon the Company and upon the Employees.

The fees and expenses of said Board of Arbitration shall be paid by the Company and by the Employees in equal parts and shall be agreed upon and provided in advance of the arbitration.

RESPONDENT'S EXHIBIT 4

INDEX OUTLINE

PROVISIONS OF CONTRACT TENTATIVELY AGREED UPON IN COLLECTIVE BARGAINING ON SEPTEMBER 12, 13, 14, 26, 27, AND 28, 1945, AND COMPANY PROPOSALS AS TO PROVISIONS NOT YET FULLY AGREED UPON IN BARGAINING

Parties	Page 1	
Article I—Bargaining Unit, etc	Page 1	
Sec. 1—Bargaining Unit	Page 1	Agreed. 9–14–45.
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Article VI—Seniority.		
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Sec. 2 (b)—Permanent Transfers	Page 9	Agreed 9–14–45.
Sec. 2 (c)—Temporary Transfers	Page 10	Agreed 9–14–45.
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Step 1—Departmental Committee and Personnel Manager	Page 16	Agreed 9–14–45.
Step 2—Plant Grievance Committee and Manager	Page 16	Agreed 9–14–45.
Step 3—Mill Manager and International Representative	Page 17	Agreed 9–14–45.
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Article VIII—General Provisions and Termination:		
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Sec. 3—Solicitation	Page 20	No yet agreed to. Agreed 11–[illegible]–45.
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Sec. 7—Bulletin Boards	Page 21	Agreed 9–28–45.
Sec. 8—Termination	Page 21	Agreed 9–26–45.

RESPONDENT'S EXHIBIT 5

COPY OF WESTERN UNION TELEGRAM

DECEMBER 3, 1945.

Mr. GALE RICHMOND,
Crompton-Highland Mills, Griffin, Georgia.

On December 1, 1945, local union unanimously voted to place further action at Crompton-Highland Mills into hands of negotiating committee. That committee has asked me to request a conference with you for December 14, 1945.

KENNETH DOUTY,
Ga. State Directors Textile Workers Union of America,
Atlanta, Georgia.

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U. S. GOVERNMENT PRINTING OFFICE: 1948

APPENDIX TO RESPONDENT'S BRIEF

PORTIONS OF TESTIMONY PARTICULARLY RELIED UPON

PAGE REFERENCES ARE TO THE PAGES OF THE TRANSCRIPT OF TESTIMONY

Mrs. CLARA KANUN (Board witness):

DIRECT EXAMINATION

Pages 22–23:

By Mr. PURDOM:

Q. Mrs. Kanun, what is your full name?

A. Clara Kanun.

Q. Where do you live?

A. At the Griffin Hotel, Griffin, Georgia.

Q. What is your job?

A. I am a field representative of the Textile Workers Union of America.

Q. In this capacity have you had any dealings with the Crompton-Highland Mills, Inc., Griffin, Georgia?

A. Yes, I have participated in the contract and wage negotiations which have taken place since we won the election last August.

Q. What were the first negotiations that you participated in—what date?

A. The first meeting I attended was on October 18.

Q. Were you handling any particular part of the negotiations?

Trial Examiner ROGOSIN. What date?

The WITNESS. I am sorry; 1945.

By Mr. PURDOM:

Q. Were you handling any particular part of the negotiations?

A. Yes, I was handling the wage end of the negotiations.

Q. And for whom were you handling those negotiations?

A. For the local union at the Crompton-Highland Mills.

* * * * * * *

Pages 28–29:

Q. What happened after this conference? What was the next step?

A. Well, negotiations seemed to be deadlocked, and we then in the interim had a local union meeting during which the local union decided to petition the Secretary of Labor for a strike vote and to shut the mill down unless they were able to get a satisfactory contract.

Q. Did you take that vote? Was that vote taken?

A. That vote was taken.

Q. Do you recall the results of that vote under the Smith-Connally Act?

A. Yes. The results were, I think, 369 votes for a strike and 120—130 votes against a strike. I am not sure—120 votes against the strike.

Page 31:

Q. Did it give any reason for not offering any wage increase?

A. The Company's position was that at this time their workers were earning the highest rates in the territory and therefore they were in no position to give an increase at this time.

Q. Well, what did it say its policy was on giving increases?

A. The Company did say that when the other manufactureres in the territory raised wages, that it, according to its previous policy, would be among the first to do so.

CROSS-EXAMINATION.

Pages 55–57:

Q. Mrs. Kanun, I believe you stated on direct examination—this may not be exactly correct; I wasn't paying too good attention and I want to make sure—it is true, is it not, that each time you presented a demand for a wage increase we responded by explaining to you—stating, at least—that our wage rates and earnings were already in excess of the earnings for comparable work in this locality in the industry?

A. That was the explanation you made.

Q. And we declined to give any wage increase on that account?

A. That was the position you took.

Q. That was our position.

A. Yes.

Q. And each time a wage increase was demanded we explained our refusal to give it to you by stating that our current wage rates and earnings under our incentive plan were already in excess of rates for comparable work in this locality and industry; is that right?

A. Yes, that was the explanation you made.

Q. And we also stated to you in further explanation of our refusal to give any wage increase that our wage rates and earnings under the incentive plan, average earnings, were in excess of the guide rate established by the War Labor Board and the Southern Textile Commission; that was our contention?

A. Yes.

Q. And that was the basis on which we declined to give the wage increase?

A. Yes.

Q. Is that right?

A. That was the basis you stated.

Q. Now, each time that matter was discussed, did we not remind you and the Union Committee that Crompton-Highland Mills had always been among the first of the mills to make a wage increase in this industry and locality?

A. You made that statement.

Q. Did we not also state to you each time the matter was discussed that whenever a wage increase was appropriate and proper, we would be among the first in this area and locality and industry to make the wage increase?

A. Yes.

* * * * * *

Pages 58–59:

Q. Mrs. Kanun, you realized that in that proposal and in all proposals which the Company made to the Union throughout bargaining in this matter, we included a provision whereby the closing of this contract would not preclude further bargaining with respect to wages, didn't you?

A. Yes.

Q. And each time you made a wage demand, I explained our refusal to accede to your demand by telling you that our wage rates were already higher than the rates in comparably situated mills and each time I explained that we always had been among the first to make wage increases when wage increases were being made and assured you whenever an occasion for a wage increase occurred we would be among the first to make the wage increase; I also called your attention to the fact that we were offering to contract with you for a wage reopening at any time; is that true?

A. Yes.

* * * * * *

STIPULATIONS OF COUNSEL

Pages 90–94:

Mr. WILLIAMS. Mr. Examiner, at the request of Counsel for the Board and out of regular order, with your permission, we will offer certain evidence which we intended to offer in the regular course of introducing our evidence. He asks that that be put in now so that he can examine Board witnesses with respect to it.

Trial Examiner ROGOSIN. Very well.

Mr. WILLIAMS. If it meets with your approval, we will put them in now.

Trial Examiner ROGOSIN. That may be done.

Mr. WILLIAMS. I ask that document identified on front page as "Company Counterproposal, submitted August 31, 1945," be identified as Respondent's Exhibit 3. I have duplicate copies of that.

(Thereupon the document above referred to was marked "Respondent's Exhibit No. 3" for identification.)

Mr. WILLIAMS. I ask that document identified on the front pages as "Provisions of Contract Tentatively Agreed Upon in Collective Bargaining on September 12, 13, 14, 26, 27, and 28, 1945, and Company Proposals as to Provisions Not Yet Fully Agreed Upon in Bargaining" be identified as Respondent's Exhibit 4.

(Thereupon the document above referred to was marked "Respondent's Exhibit No. 4" for identification.)

Mr. WILLIAMS. Here is a copy of what you have already identified as Respondent's Exhibit 2.

Let me say for the clarity of the record that in logical sequence, Company's Exhibits 3 and 4 should have preceded Company's Exhibit 2. For logical sequence, they should have been considered in the order of 3 first, 4 second, and 2 third. Perhaps we can make a stipulation that Company Exhibits 3 and 4 include various riders clipped to pages at various points, various interlineations and erasures and marginal dates. With respect to Company Exhibit 3, the Company Counterproposal submitted August 31, 1946——

Trial Examiner ROGOSIN. 46?

Mr. WILLIAMS. 1945. (Continuing)—the marginal dates in red pencil reflect the dates on which tentative agreements were reached in bargaining with respect to these provisions. The marginal dates on the attached riders reflect the dates on which the insertion of these matters was tentatively agreed to in collective bargaining. And the marginal dates also on erasures and interlineations reflect the dates in the course of bargaining on which those erasures or interlineations were tentatively agreed to, all agreements in bargaining having been mutually agreed between the Company and the Union, being tentative agreements until the complete contract was agreed upon. It was understood, in other words, that at the beginning of the bargaining that all agreements reached in the bargaining would be tentative until the complete contract was finally agreed upon.

Mr. PURDOM. Yes.

Trial Examiner ROGOSIN. Does the Board agree to that stipulation?

Mr. PURDOM. Yes. Of course on the dates and so forth and the interlineations, checked and accepted as correct unless found to be in error, in which case Counsel will make appropriate corrections.

Trial Examiner ROGOSIN. I notice as you were leafing through your exhibits, there appear to be paragraphs that have been stricken. You refer to them as erasures?

Mr. WILLIAMS. That's right. With respect to Company Exhibit 4, which is a memorandum of the provisions agreed upon in bargaining and the Company proposals as to provisions not agreed upon, that memorandum was made up and completed on October 12, on which date copies of it were furnished to the Union, and it was used as the basis for subsequent bargaining.

This Exhibit 4 gives effect to all interlineations, erasures and riders in Exhibit 3, and the typewritten dates simply carry forward the dates which were in the margin of Exhibit 3 and show the dates on which those provisions as-amended in prior bargaining were finally agreed to, still subject to the tentative agreement arrangements which were mentioned a minute ago.

The erasures and interlineations and riders attached to Exhibit 4 reflect bargaining agreements and the dates of bargaining agreements made after Exhibit 4 was prepared: that is, after the bargaining on October 17, 1945.

Trial Examiner ROGOSIN. The Union stipulates as to the statement with respect to the exhibit?

Mr. DOUTY. Yes.

Trial Examiner ROGOSIN. The Board does?

Mr. PURDOM. The Board so does.

Trial Examiner ROGOSIN. Very well. Respondent's Exhibits 3 and 4 for identification will be received.

(The documents heretofore marked "Respondent's Exhibits Nos. 3 and 4" for identification were received in evidence.)

Mr. WILLIAMS. Then we offer 2 at the same time, please sir.

Trial Examiner ROGOSIN. Two, it has merely been marked for identification up to this point?

Mr. WILLIAMS. Yes.

Trial Examiner ROGOSIN. Very well. I take it there is no objection to the receipt of Respondent's Exhibit 2?

Mr. PURDOM. That is correct.

Trial Examiner ROGOSIN. Then Respondent's Exhibit No. 2 may be received and so marked.

(The document heretofore marked "Respondent's Exhibit No. 2" for identification was received in evidence.)

KENNETH DOUTY (Board witness).

DIRECT EXAMINATION

Pages 106–107:

Q. Prior to January 1, 1946, what counter proposal, if any, had the Company made in wages?

A. The Company's position on wages from October 18 through the meetings in November was that they would make no wage proposal that would embody an increase. They repeatedly stated that it was not a question of their ability to pay; that that was not the point at issue, but that they felt that they were paying as high rates, if not the highest of any in the community and until there was a general movement for an increase, the Company had no intention of putting one in.

* * * * *

Pages 108–109:

Q. Tell us how these meetings that you had with the Company were arranged, the ones you have designated by date.

A. I think the first one was arranged through telephone between Mr. Williams and myself. The others were tentatively arranged through—by carrying over from one series of meetings to another and deciding at the termination of one group of meetings when the next would be held. Those meetings were subject to change and often were changed, and again it was through Mr. Williams and myself that arrangements were made.

Q. That is through December 19?

A. Yes. Meetings at Conciliation Office were arranged—Mr. Lacey of the Conciliation did most of the arranging, though Mr. Williams and I did some of the arranging ourselves.

Q. Did you ever have any meetings arranged on the notice of an hour or thirty minutes or anything of that nature?

A. No, sir.

Q. Generally, what notice preceded the meetings?

A. It was usually a couple of weeks.

Q. Who attended those meetings for the Company?

A. Those meetings for the Company were attended by Mr. Pickford, the plant manager; Mr. Ethridge, the personnel director; Mr. Williams, the attorney; Mr. Charles Merryman, the vice president, and Mr. Nightingale Richmond, president.

Q. Now, for the Union?

A. For the Union the meetings were attended by the local union committee of about seven or eight people and by myself, and then

most of the meetings were also attended by Mrs. Clara Kanup, and one was attended by Mr. Frank Barker, National Representative on our staff.

Q. Did those meetings last ten, fifteen or twenty minutes, or a long period of time?

A. The meetings usually lasted all day with an adjournment for lunch, beginning at 9 o'clock, 10, or 10:30.

Trial Examiner Rogosin. The meeting, not the lunch.

The Witness. The meeting; unfortunately, not the lunch.

A. (Continuing.) And lasted until late afternoon.

CROSS-EXAMINATION

Page 114:

Q. We had agreed to provisions whereby the contract might be completely agreed upon and executed without foreclosing the wage issue, leaving it so you could bring the wage issue up?

A. It is customary in all contracts to have a reopening provision for wages.

Q. I asked you: We had offered to do that, hadn't we?

A. Yes.

Q. We had also told you all through the bargaining that Crompton-Highland Mills had always been among the first of the mills in this area, locality and industry to increase wages when wage increases occurred, and had assured you we would always be among the first to increase wages when wage increases were occurring in this area and locality.

A. I remember your making that offer many times.

EXAMINATION BY THE EXAMINER

Page 118:

By Trial Examiner Rogosin:

Q. Mr. Douty, was December 19 the date of your last bargaining conference with the Company in this case?

A. Yes, sir.

Page 119:

Q. Well, what was the position of the parties at the conclusion of that conference on December 19? Was it contemplated that the parties should meet again with respect to wage proposals?

A. Not particularly. I mean, we broke up not having reached agreement on these points, and our situation at the end of the meeting was one of stalemate on these particular points in dispute.

CROSS-EXAMINATION

Pages 119–120:

By Mr. WILLIAMS:

Q. Mr. Douty, I believe you said this on direct examination: The conference on November 7, which was held in the office of the Conciliation Service in Atlanta, the idea of that conference didn't originate with either you or me; that was originated with the Conciliator, wasn't it?

A. The Conciliator in his normal performance or function under the Smith-Connally Act originated that conference.

Q. You had given notice of your intention to strike and he called that conference in an effort to avoid the strike.

A. That's right.

Q. And that was also true of November 8 conference?

A. Yes; we decided to meet the next day. I suppose it would be us arranging, you would officially call it.

Q. December 19 conference was arranged at the request of the members of the local union bargaining committee.

A. No; it was arranged at the request of the total committee; myself and Mrs. Kanun and members of the bargaining committee and the total negotiation committee.

Trial Examiner ROGOSIN. Was any strike vote actually taken?

The WITNESS. A strike vote was taken on November 22.

Mr. WILLIAMS. 27.

Trial Examiner ROGOSIN. As I recall it, Mrs. Kanun testified——

The WITNESS. She testified—she transposed a few dates, but the strike vote was taken on November 27. 369 "yes" votes and 120 "no" votes.

* * * * * * *

REDIRECT EXAMINATION

Page 121:

By Mr. PURDOM:

Q. Mr. Douty, will you state what the disagreement was on the preamble?

A. The disagreement on the preamble stemmed from the fact that in the Company's counterproposal they had made this contract as between the Company and the employees in the hereinafter described bargainings units, whereas our preamble had made the contract between the Company and the Union. We were therefore not in agreement on that section.

* * * * * * *

Pages 121-122:

Re-cross-examination by Mr. Williams:

Q. And the disagreement was that we wanted to make the contract with the employees in the certified bargaining unit recognizing you as the agent of the employees in making the contract and you wanted the contract made between the Company and the Union as a principal rather than treating the Union as an agent.

A. Yes. We felt that the concept of separating the employees and the Union was a false one. The employees and Union were synonymous and therefore should not be separated.

* * * * *

Ralph Williams (Respondent witness):

DIRECT EXAMINATION

Page 152:

The Witness. My name is Ralph Williams. I am attorney at law for Crompton-Highland Mills, Inc., in this matter.

I was the Company's spokesman in the bargaining negotiations between Crompton-Highland Mills and the Textile Workers Union of America, and it is therefore necessary that I occupy the rather undesirable position of both witness and attorney at law in the case.

* * * * *

Page 153:

The Witness. I want to explain why I went to so much trouble getting to an understanding of the point plan.

I can say to you simply that we anticipated that the point plan would come into the bargaining for a considerable amount of discussion.

I wanted to say—and this is off or on the record, as you see fit—I wanted to say that we anticipated that because it had been generally stated, both by employees and union representatives, that dissatisfaction with the point plan was largely responsible for the organization of the union.

* * * * *

Pages 164-166:

The Witness. So far as the matter of wages had been discussed prior to October 17, 1945, otherwise than in connection with the frequently repeated discussions of Sections 1, 2, and 3 of Article 2 of the Company proposal, the discussion had centered about the Union's demands for a 5-cent general increase and our explanation as to why we were unwilling to agree to that increase.

We had explained to the Union again so many times that the committee got to leaving whenever I started my little speech

again that our wage rates are—were then higher than the rates paid by any other comparably situated mill. Our hourly rates were higher and the average earnings under our incentive wage plan were higher and the earnings at a 75-point hour, which is certainly the intended minimum average—I will explain that again a little more fully in a minute—of the incentive rate, was higher than the rates being paid by any other mills. They were higher than the so-called guide rates which had been established by the War Labor Board and the Southern Textile Commission for the Twenty-three Mills, which were involved in the rather celebrated Twenty-Three Mills Case.

We, for that reason, declined to make any wage increase, but we repeatedly reminded the Union and the Committee that Crompton-Highland Mills had always been among the first of the mills in this locality and area to make a wage increase whenever wage increases were being made, and we assured the Union and the Committee that the mill always would be, if possible, among the first to make any wage increase when an occasion for a wage increase occurred.

Now, throughout the bargaining, prior to October 17, the matter of Union security had frequently come in for discussion. At all times, under instructions from the Company, whenever the matter was discussed, I told the Union and the Committee that the Company would not agree to in any wise make membership in the Union a condition of employment. The Company has no objection, we told them, to employees being members of the Union, but each employee has a right to decide for himself or herself whether he or she desires to be a member of the Union. And we told them repeatedly that all employees would be treated exactly alike, whether they were members of the Union or not, and that we would not ever require any employee to be or remain a member of the Union in order to work for us. We also told them repeatedly that we would not check off or deduct the dues of the Union from the wages of employees.

I very frankly feel that up until October 17, Mr. Douty and the Committee no doubt believed that that was bargaining strategy. I very frankly feel that up to October 17 they believed that we would eventually agree to some sort of union security. I think the whole tenor of the bargaining evidenced that fact.

But I think on October 17, 1945, we finally succeeded in convincing the Union and the committee that we were not going to agree to any sort of union security or check off of union dues, and unfortunately, from the time we made the Union realize that fact on, the bargaining took a very different turn.

Pages 176–180:

The WITNESS. Now, I have to say to you that on October 18, Mr. Douty demonstrated in everything said and done that he was not going to agree to anything until agreement had been reached—some agreement satisfactory to him—had been reached with respect to union security.

Mr. PURDOM. Objection.

Trial Examiner ROGOSIN. That statement may be stricken.

Mr. PURDOM. That is a conclusion without stating the facts.

The WITNESS. We submitted——

Trial Examiner ROGOSIN. You may state what you said, of course.

The WITNESS. We tried to discuss with Mr. Douty the changes which we were willing to make in our work assignment, point standards—in the work assignment and point-standard sections of our contract. And he simply declined to discuss those things with us on that day at all. Each time we tried to discuss that subject, he told us that we had to get the union security settled, that he couldn't have a contract that didn't include union security provisions satisfactory to him.

Mrs. Kanun came into the conferences for the first time on October 18, 1945. After we had been discussing the matter for some time, and as Mr. Douty was folding up his papers preparatory to breaking off the negotiations, I realized——

Mr. PURDOM. Objection, Your Honor. The conclusion as to breaking off the negotiations——

Trial Examiner ROGOSIN. "Breaking off the negotiations" may be stricken.

The WITNESS. Well, as Mr. Douty was folding up his papers preparatory to marching out of the room, I realized that Mrs. Kanun had not caught the point that we were willing to guarantee the rates per point and earnings at resulting point hours against reduction during the life of the contract. And I reiterated that point to Mrs. Kanun. Mrs. Kanun then turned to Mr. Douty and in our hearing said, "I think we had better go into this wage matter further."

And Mr. Douty said to Mrs. Kanun in our hearing, "There is no sense in talking about it any further." And with that he left the room.

The Union, Mr. Douty speaking for the Union, told us on October 18 that negotiations were at an end and that the Union would give notice of its intention to strike.

Let me say, if I may, that I frankly took that as a bargaining strategy movement. I construed the breaking off of negotiations on October 18 as simply bargaining strategy and I likewise construed the threat of strike vote as simply bargaining strategy.

However, after the thing went on for some days and we did not hear any more from the Union, I became fairly well convinced that the Union had sincerely broken off the negotiations.

Shortly prior to November 7, 1945, and I should say three or four days prior to November 7, 1945, Mr. Lacey, of the Conciliation Service in the Atlanta Office, requested a conference to see if we could iron out our differences and avoid the strike which the Union had given notice of intending to call. As I understood it, the conference was not requested by the Union but was instigated solely by the Conciliation Service.

We met with the Union in the offices of the Conciliation Service in Atlanta. Back on October 18, when we furnished the Union the wage schedule which we have been talking about which the Union requested, without looking at the wage schedule, they said it was not what they wanted and that they wanted a statement of average hourly earnings. We prepared that statement in anticipation of the Union requesting another bargaining conference. Since the Union didn't request another bargaining conference, we submitted the October 26 summary of average hourly earnings, which has been identified in this record as Respondent's Exhibit 1, to the Union at the conference on November 7, 1945.

The Union did not look at it, did not examine it, but simply said immediately when we handed it to them that it was not what they wanted and they weren't satisfied with it. They said that without so much as looking at it.

Back on October 18 we had outlined verbally our willingness to amend Sections 1, 2, and 3 of Article 2 of our proposal with respect to wage rates and work assignments; and, while we were reluctant, in the face of a threat of a strike, to make any concessions, we nevertheless, in the hope of being able to compose our difficulties with the Union, prepared and formally submitted to them at the conference on November 7, 1945, amendments of the counter proposal with respect to wage rates and work assignments, which document has been identified in this record as Respondent's Exhibit 2.

In that amendment of our counter proposal we sought to meet every objection which the Union had raised to the previous proposal. We said specifically that the rates and earnings as were shown by said schedule—after it was said specifically that a schedule of hourly minimum rates is attached thereto. And then we went on to say: "And rates and earnings as shown by said schedule will not be increased or reduced during the term of this contract unless a general increase or reduction of wage rates is mutually agreed upon in collective bargaining.

Trial Examiner Rogosin. Is there a schedule annexed to that?

The WITNESS. No, sir. We are using the same schedule as used on October 18, 1945. There was no schedule attached at that time. We had previously furnished the wage schedule.

To meet their principal objection we provided if our engineers and their engineers should be unable to reach agreement with respect to any point standard or work assignment heretofore or hereafter established, the matter in dispute might be submitted to arbitration, and we proposed machinery for submitting it to arbitration.

Although we had met in the Conciliation Service Office with the hope of composing our differences; although the Company had gone to the trouble of drafting in formal shape an amendment of its counter proposal with respect to one of the matters which had kept us apart in the negotiations, I regret to say when we handed this counter proposal to the Union, neither Mrs. Kanun nor Mr. Douty nor any member of the Union committee read it or looked at it. But Mr. Douty and Mrs. Kanun and several members of the Union committee, without looking at it or reading it, said that it was not satisfactory.

I won't undertake to go into, at this time, the matters which were discussed at great length at that conference, except to say that they pertained entirely to the security of the union and the collection of the union's dues and not to matters pertaining to the terms and conditions of the employment of the employees.

Trial Examiner ROGOSIN: May I interrupt for just a moment? Do I understand there was no change in the wage schedule submitted on November 7——

The WITNESS. No, sir.

Trial Examiner ROGOSIN (continuing). Over that of October 18?

The WITNESS. That's right.

Trial Examiner ROGOSIN. What was the substance of change in the proposal?

The WITNESS. What was the substance of change in the proposal? The biggest substance of change in the proposal was our agreement to arbitrate disputes with respect to point standard and work assignments. The Company declined to make any general wages increase with the limited exception of the thing which occurred on December 19 which we will talk about in a minute.

Mr. PURDOM. I didn't catch that. Did you say "did" or "did not" decline to make a wage increase?

The WITNESS. The Company throughout the bargaining, up until December 19, declined entirely to make any general wage increase. And the thing that occurred on December 19, we will talk about a bit more in a minute.

We came back to Griffin for a further bargaining conference on November 8, 1945. At the very outset of that bargaining conference, Mr. Douty told us that the Union will not ever sign any contract irrespective of its other provisions unless that contract includes provisions satisfactory to the Union for the security of the Union and the collection of its dues.

We reiterated to Mr. Douty again that we did not feel any obligation to provide his union with security, that we were not going to require any employee to join or become a member of his union, and that we would not collect his dues for him.

We made various and sundry provisions for assisting the Union in the collection of its dues, but the Union insisted that we collect its dues for it, and we declined to do that.

So Mr. Douty told us that we might as well quit talking about a contract because he would not ever sign any contract, nor ever agree to any contract, irrespective of any other provisions of the contract, unless it included provisions satisfactory to him for the security and protection of the union and the collection of the union's dues.

At the end—as that conference on November 8 was breaking up, Mr. Douty told us that he wanted us to understand that the Union had been prepared and had intended cooperating with the Company in making the employees like the point plan of incentive wage payment, that the Union believed that it could make the employees like the incentive wage plan, but believed that the Company could not do so, and that the Union had been prepared and had intended cooperating with us in making the employees accept and like the point plan; but, that if we were not going to protect the Union by giving it security so as to require that at least the employees who had already joined the Union maintain their membership in the Union, the Union would do everything which it could to discredit and try to destroy the point plan. He simply predicated his support of, or opposition to, the point plan on whether or not the Union obtained provisions in the contract satisfactory to it for its own security and the collection of its dues.

Mr. Douty on November 8 definitely broke off and terminated all bargaining negotiations, and we no longer thought that that was a strategy matter. We regarded that as a sincere and final breaking off and termination of bargaining negotiations.

However, in the interval between November 8 and December 19——

Mr. PURDOM. Objection, Your Honor, to statement that Mr. Douty broke off bargaining negotiations on that date without stating the facts on which the conclusion is based.

The WITNESS. After that Mr. Douty stated that he was definitely and finally breaking off and terminating the bargaining negotiations. That is what I meant to say.

However, after November 8, Mr. Merryman received a letter from one member of the committee, and we understood, Mr.——

Trial Examiner ROGOSIN. Who?

The WITNESS. Mr. Merryman, vice president of the Company, received a letter from one member of the committee, and we understood that the bargaining committee itself desired to resume negotiations.

Let me look and see what the date of the telegram was.

(Witness examines document.)

The WITNESS. The Company then received telegram from Mr. Douty, which has been identified in this record as Respondent's Exhibit 5, saying that all matters—I will read it. Saying the union had "unanimously voted to place further action at Crompton-Highland Mills into the hands of negotiating committee." And that that committee had asked him to request a conference for December 14.

We were unable to arrange the conference on December 14, but did arrange for it and it was held on December 19, 1945. Nothing was accomplished at the December 19, 1945, conference. Mr. Douty again told us at the outset of the conference that he would not agree to any contract, irrespective of its other provisions, unless it included provisions satisfactory to him for the security of the union and the collection of the union's dues.

We told Mr. Douty that in our opinion he was putting his own interest ahead of the interest of the employees whom he was purporting to represent, whom he had sought and obtained authority to represent; and that, in our opinion, was utterly contrary to, and in derogation of, his duties as the sole and exclusive bargaining agent of the employees.

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CROSS-EXAMINATION

Pages 221–226:

By Mr. PURDOM:

Q. Mr. Williams, I believe you said your instructions from the Company were from the beginning not to agree to union security and check-off.

A. From the very first conference which we had with the Union, on instruction from the Company, I told them that we would not agree to union security or check-off.

Q. During the entire negotiation, did you ever offer, in lieu of union security or check-off, to give an increase, say, of 20 cents an hour in wages?

A. I would not have done that sort of thing, no, sir. I did not do that sort of thing.

Q. You did not then, on that proposition of wages, offer an increase of wages in lieu of a check-off?

A. I did not, no, sir, no, sir. As a matter of fact, I was shocked when Mr. Douty offered to support our point plan if we would give him union security.

Q. In other words, on union security, you went in there with a predetermined idea that it was not going to be given regardless?

A. We are of the firm opinion that union security is not our responsibility.

Q. And under no circumstances would you give a check-off.

A. We are not willing to give a check-off.

Q. And you didn't ever, on any other occasion, try to bargain by giving the union something else in lieu of that?

A. Yes, sir, we tried very hard. At the conference with the Conciliator on November 7, the Conciliator made a suggestion whereby the Company might cooperate with the Union in enabling the Union to collect its own dues. We offered to accept the Conciliator's suggestion; the Union turned it down and insisted that we collect the Union's dues for it, which we declined to do.

Almost all of our conferences on November 8 was devoted to trying to work out a mutually agreeable way whereby the Company could assist the Union in collecting its own dues, which we were perfectly willing to do.

We were not willing to collect the Union's dues for it. If it matters, and to be specific, the thing we tried to work out on January 8 was that we would put in each department of the mill——

Q. Not January 3.

A. November 8, I mean to say [continuing]. That we would put in each department of the mill a box marked "Union Dues," and that we would give the employees on the first pay day of each month two checks, one for whatever the amount of the Union dues are or may get to be, and the other for the balance of their wages, and that we would put a shelf like the one over there [indicating], an upright, stand-up height shelf, by that box and would keep a pencil and pen there.

We even finally offered to put a stamp there "Pay to the order of the Textile Workers Union of America" to facilitate employees in endorsing checks, and let them drop them in that box for their union dues.

The Union wouldn't agree to that. The Union wanted no part of the responsibility for collecting its own dues. The Union insisted that we collect its dues for it; and that we were thoroughly unwilling to do.

Q. Didn't the Union make a counterproposal that you have the second check made payable to the Union and the Company refused?

A. That's right. We declined to do that. We think that anything we do to help the Union collect its dues is that much more than we've got to do, and we thought we were going way beyond any obligation in the proposal which we made.

Q. Didn't the Union offer to put someone in the office to do the extra work and pay them on extra bookkeeping?

A. I think they did, but we weren't willing to have the Union working in our office.

Q. And you never made any counterproposal on the wage section of the contract in lieu of the union security: We will give you an increase in wages?

A. Mr. Purdom, it would shock me to think anyone would bargain on that basis. I think these things ought to be bargained on their own merits. No, sir; I didn't try to buy my way out of union security. I will not ever try to buy my way out of union security.

Q. You didn't try to bargain your way out?

A. Yes, sir; I did. I tried as fully as I could to explain to the union why we didn't give them union security, and I have a speech I can make again if you want to hear it.

Q. On wages during these same conferences you were as adamant on your position of wage increase as the Union was on union security?

A. We were adamant on both positions. They wanted a 5-cent increase; at that time we were unwilling to give it. They were adamant on Union security, and we weren't willing to give it.

They broke off negotiations on December 19, and after they broke off negotiations on December 19, we didn't understand we were to have any more bargaining with them; they told us they were through bargaining with us and we took them at their word.

Trial Examiner Rogosin. Is that your conclusion or did one of the Union representatives make that statement?

The Witness. Mr. Douty told us he was breaking off and terminating the negotiations on December 19.

Trial Examiner Rogosin. In substantially those words?

The Witness. In substantially those words; yes, sir.

By Mr. Purdom:

Q. Now, you say on December 19 you were not ready to give a nickel increase, is that right?

A. We were not.

Q. How did you happen to be ready on January 1 to give it?

A. Mr. Pickford—I was not in Griffin at that time. Mr. Pickford is going to take the stand and explain it.

Q. What do you know? I am not asking what Mr. Pickford knows.

A. I will tell you what I have been told. Would you rather hear what I have been told on what the reasons were than the man who told me that?

Q. What do you know?

A. All right. All Griffin, Georgia, is a relatively close community. The primary industry in the community is textile. Crompton-Highland Mills is quite proud of the fact that its wage rates have always been at least as high—most of them a little higher than other wage rates in the community. It is intent upon maintaining that position as long as it can. It has always been among the first to make wage increases in the community and it always means to be among the first to make wage increases in this community ~~if it~~ can.

It learned, through the way things like that get around, that other mills in this community were about to make a wage increase and it didn't want those mills to get ahead of it. It wanted to be sure that it made the wage increase just as quickly as anybody else in this locality did. It must maintain its position on competitive wage rates as long as it possibly can. It therefore decided that it wanted to be among the first to make the wage increase, and I don't know whether it got in in time to be the first or not, but it certainly was among the first.

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EXAMINATION BY TRIAL EXAMINER

Pages 240–241:

By Trial Examiner ROGOSIN:

Q. Mr. Williams, reference has been made during cross and testimony to union security. Was there any detailed discussion of the nature of the union security involved, whether for closed shop, union shop, or maintenance of membership?

A. Yes, sir. In the early stages—I should say at one of the very first conferences, and I don't mean August 31 conference; I mean possibly September 12, 13, or 14 conferences, the Union started out by asking for closed shop, and indicated a willingness to settle for union shop. Along toward the end sometime—I am not sure when—I think on October 17, the Union indicated a willingness to accept a provision whereby all those who had up to now, had joined the Union would be required to maintain membership in the Union as a condition of employment.

Q. Let me interrupt in the interest of brevity. Is it correct to state that the Company was opposed to union security in any of the forms proposed by the union?

A. Yes, sir.

Q. That you have just indicated?

A. Yes, sir.

Q. And was that decision or policy fixed before you approached your bargaining negotiations as early as August 31, 1945?

A. Well, we entered into the bargaining negotiations with the intention of trying to talk that thing out and persuade the Union to our views and knew they would try to persuade us to their views. As the thing went along we became more convinced we would not give any sort of Union security.

Q. What was your position at the threshold of bargaining negotiations with respect to any form of union security?

A. Of course, they had given us their proposal ahead of August 31, and it concluded, if I remember it, "Union shop." I believe it was "Union shop." And we had naturally discussed their proposal in detail before we made our counterproposal of August 31 and had concluded that we would not accept their union security proposal. I should take it that that is a union-shop proposal which they originally made to us.

Q. And that, as I understand it, was separate and apart from your position with respect to the check-off, upon which you apparently made some counterproposals on November 7 or 8 at the meeting with the Conciliator.

A. The Company was equally opposed itself to deducting the union dues. The Company was willing to try to find some way by which it could assist the Union in collecting its own dues. And that is why we made the proposal, on November 7 and 8.

* * * * * *

FRANK ETHRIDGE (Respondent's witness).

DIRECT EXAMINATION

Pages 253–257:

By Mr. WILLIAMS:

Q. Where do you work, Mr. Ethridge?

A. Crompton-Highland Mills.

Q. In what capacity?

A. Personnel manager.

Q. And have you, as personnel manager of the Company, and as Company representative, participated in all of the bargaining conferences between Crompton-Highland Mills and Textile Workers Union of America?

A. I have.

Q. Mr. Ethridge, were you in the bargaining conference which was held in Mr. Pickford's office on November 8, 1945?

A. I was.

Q. I go back first, please—I skipped my sequence: Were you in the bargaining conference held in Mr. Pickford's office October 18, 1945?

A. I was.

Q. How did that conference break up?

A. I believe that was the one where Mr. Douty said that if we could not come to any agreement on union security, there would be no use of further conference.

Now, I don't say that those are his words, but——

Q. Who terminated that conference, the Company or the Union?

A. The Union did.

Mr. PURDOM. Objection, Your Honor. Conclusion without statement of facts.

Trial Examiner ROGOSIN. The question and answer may be stricken. The question is excluded and the answer is stricken.

By Mr. WILLIAMS:

Q. Did the Union or not withdraw from that conference, Mr. Ethridge?

A. The Union did withdraw.

Q. What statements were made at the time it withdrew?

A. That they saw no use of further negotiations if there could be no—if we couldn't come to any agreement as to union security.

Q. Were you present at the bargaining conference in Mr. Pickford's office on November 8, 1945?

A. I was.

Q. What, if any, statements did Mr. Douty make at that conference with respect to the point plan and union security?

A. He said that they had come into that conference with the intention of supporting and doing all they could to help put the plan across. If the Company was not willing to give them union security, then he was going to withdraw all the aid he had offered and do everything he could to destroy and detract from the point system.

Q. At the conference on November 8, 1945, what, if any, statement did Mr. Douty make with respect to the entire contract and union security?

A. He said at that time that he wouldn't sign any contract, irrespective of other provisions, if it did not contain union security, or provisions for union security.

Q. Were you present at the bargaining conference held at Mr. Pickford's office on December 19, 1945?

A. Yes, sir.

Q. What, if any, statement did Mr. Douty make with reference to the entire contract and union security at that time?

A. Well, practically the same thing he had made before.

Q. Repeat the gist of it, please, sir.

A. Well, that he was still not willing to sign a contract that did not have in it some provision for union security and that he saw no use for further negotiations as long as the Company took the stand they did about union security.

Q. Did the Union withdraw from the conferences on November 8 and December 19, 1945?

A. Yes, sir. They did on all three occasions.

Q. What, if anything, did Mr. Douty say as he left the conference on November 8, 1945, with respect to further conferences?

A. On November 8?

Q. Yes, sir. That is the conference that was held in Mr. Pickford's office after the conference with the Conciliation Service, in Atlanta.

A. I think he said at that one—I don't remember whether this is the exact conference or not: whether it was the 8th or the 19th, that there was no use for the holding of further conferences so long as the Company took its stand about union security.

Q. Did he make substantially that same statement in withdrawing from the conference on December 19?

A. Yes, sir.

Q. Did you, as a Company representative, understand on December 19 that all bargaining negotiations were over?

A. Yes, sir; I would have thought so.

Q. Did you think so?

A. Yes, sir.

Q. For what reason?

A. Well, by his own statement.

Q. By whose own statement?

A. By Mr. Douty's own statement; there was nothing else you could.

Q. Yes.

* * * * *

CROSS-EXAMINATION

Page 262:

Q. Now, let's see. Let's go back a minute. We talked about October 18. Did you agree on everything but union security at that time?

A. No, sir; we couldn't.

Q. Oh, there were other things in dispute?

A. Yes, sir. As I told you, arbitration came up and he (Douty) said he couldn't agree with that until he knew what stand the Company was going to take on union security.

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REDIRECT EXAMINATION

Page 273:

By Mr. WILLIAMS:

Q. Mr. Ethridge, you were trying to say why we did not reach agreement in certain matters in dispute when Mr. Purdom interrupted you. Why were we unable to reach agreements on matters in dispute?

A. Well, on the 7th of November, we met in the office of the Conciliation Service in Atlanta, and we mentioned the arbitration clause and possibly several others, and on all of them it all came back to—well, Mr. Douty would say, "We can't agree to that unless there is some agreement reached on union security." It all came back to that. It doesn't matter whether you discussed it ten minutes or thirty minutes or an hour; it all came back to where it started.

Q. Whatever issue we were discussing, it all came back to the point that Mr. Douty wouldn't agree to anything unless they were given union security?

A. As I see it, there was no other way with the attitude he was taking.

Page 278:

By Mr. WILLIAMS:

Q. What, if anything, did Mr. Douty say with respect to making any agreements whatsoever, unless we agreed to union security?

A. I didn't hear what you said.

Q. What, if anything, did Mr. Douty say with respect to his willingness to make any contract which did not include provisions satisfactory to him for union security?

A. As I said a while ago, he stated that he wouldn't be willing to sign any contract that didn't have provisions for union security in it.

Q. Did you have any reason to disbelieve Mr. Douty?

A. No, sir; I did not.

Q. Didn't we all take him at his word?

A. Yes, sir.

HERBERT A. PICKFORD (Respondent witness):

DIRECT EXAMINATION

Pages 280–284:

By Mr. WILLIAMS:

Q. What is your name?

A. Herbert A. Pickford.

Q. Where do you live, please, sir?

A. Griffin, Georgia.

Q. Where do you work?

A. Crompton-Highland Mills.

Q. What is your job?

A. Manager.

Q. How long have you been manager of Crompton-Highland Mills?

A. Almost three years.

Q. Did you participate, as manager of Crompton-Highland Mills, and as a managerial representative, in all of the bargaining negotiations between Crompton-Highland Mills and Textile Workers Union of America?

A. I did.

Q. Were you present at the bargaining conference which was held on October 18, 1945?

A. I was.

Q. What precipitated the conclusion of that conference?

A. Mr. Douty stating—I forget the exact words—but stating that the Union could not—he could not, for the Union, agree to any contract that did not have a union security clause in it.

Q. What did he say with respect to further negotiations at that time?

A. He intimated that inasmuch as we could not get together on union security, that further negotiations were off.

Q. Did we discuss that matter among ourselves afterwards?

A. We did. We thought that it was more or less of a means of bargaining strategy on the part of Mr. Douty in bringing the meeting to such a conclusion.

Q. Were you present at the bargaining conference of November 8, 1945?

A. I was.

Q. What, if anything, did Mr. Douty say at that time with respect to his willingness to agree to a contract which did not include provisions for union security?

A. Mr. Douty stated—I forget his exact words—that he could not agree to any contract that did not have a union security clause in it.

He further stated that the union—he and the union, with a union security clause, would help in whateyer way possible to make a success of our point plan. But without union security, he could not do so. As a matter of fact, he further said that he would

do everything possible to discredit it—in not the exact words, but words to that effect.

Q. Mr. Pickford, were you present at the bargaining conference on December 19, 1945?

A. I was.

Q. In your office.

A. That's right.

Q. What, if anything, did Mr. Douty say with respect to a contract and union security at that time?

A. Well, again a reiteration of his statements on October 18 and November 8, the fact that he could not agree to a contract that did not have union security provisions.

Q. Did he make any comment regarding other provisions of the contract?

A. He indicated that he could not close out any part of a contract without a union security clause.

Q. What did Mr. Douty say on November 8 and November 19 with respect to further conferences? Take the 8th first, please.

A. That further conferences were off.

Q. Were off?

A. He walked out—he and his bargaining group walked out of the conference on that date after having made the statement that he would not agree to any contract that did not have a union security clause.

Q. And did he then state that further conferences were off?

A. He did.

Q. Did he walk out of the meeting on December 19?

A. He did.

Q. What did he say as he left that meeting with respect to further conferences?

A. That——

Q. I meant December 19 if I said November 19.

A. That he did not see any further need of getting together.

Q. Did we consider that the conferences or negotiations had ended with December 19 meeting?

A. We did.

Q. Mr. Pickford, explain why you made the wage increase on January 1, 1946.

A. We had heard the end of the previous week that numerous mills throughout the State had made wage adjustments, and we heard through rumor, more or less through the grapevine, that local mills were planning to make wage adjustments. I checked into that rumor with various mills and found that wage adjust-

ments were going to be made, although I didn't get any specific dates as to when they would be made.

We had steadfastly said throughout the bargaining conferences that if and when wages increases in our area were made, we would be amongst the first, as we had always been, to make such increases. And when we heard that wage increases were to take place, we wanted to maintain our position as being amongst the first to make the increase and also maintain our position in the local labor market by making an increase ourselves.

* * * * *

Pages 285–287:

By Mr. Williams:

Q. When you asked the committee to come into your office on the afternoon on January 1, what did you do after the committee got there?

A. After the committee got there, I presented Mr. Corley, Mr. Hozy Corley, with a copy of a letter that I had written but had not sent at the time to Mr. Douty, and also copies of the wage adjustments that were to be made throughout the mill.

After handing the copy of the letter to Mr. Corley, together with the wage adjustment, I read the letter and asked the group to look over the rates. And Mr. Corley passed out the rates, and Mr. Gidden looked over the spinning room with a comment of two on it.

After they had looked them over, I asked if there were any questions on it. I think Mr. Gidden had one question—I forget what it was—that we quickly explained.

I told the committee that during the course of the meeting that announcements would be put on the bulletin boards with the figures that I had presented or given to the committee. The committee as a whole expressed themselves as being very much pleased with the wage adjustments, and two members specifically thanked me and asked me to thank the Company for the wage increase, as it would be very much appreciated; as I know it was.

Q. Mr. Pickford, did it occur to you that the Union or anyone else might object to the employees getting a wage increase?

A. Mr. Williams, it did; but I thought we were faced with two plans of procedure. The first, to get in touch with Mr. Douty or Mrs. Kanun and endeavor, through the wage adjustment, to close our contract, close contract negotiations; but remembering Mr. Douty's repeated statements that he could not agree to a contract that did not have union security provisions in it, we saw nothing else to do but to adopt the second course, which was to

make the announcement, and thought it best to make the announcement direct through the organizing committee, which, on numerous occasions, Mr. Douty had referred to as the "Union."

Q. Mr. Pickford, if the union or the committee had objected to the wage increase, would you have made it anyway?

A. I think, Mr. Williams, that we would have. As a matter of fact; I know; not think: we would have discussed their objections with him, but the wage adjustment would have been made.

Q. There was no occasion for discussion because there were no objections offered?

A. No objections, and it seemed to be very well received.

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WILLIAM JUDSON MOORE (Board witness).

DIRECT EXAMINATION

Pages 322–323:

By Mr. PURDOM:

Q. Mr. Moore, what is your full name?

A. William Judson Moore.

Q. Where do you work?

A. Crompton-Highland Mills.

Q. What is your job?

A. Weaver.

Q. Are you on the Union negotiating committee?

A. Yes, sir.

Q. Did you attend all of its sessions?

A. Yes, sir.

* * * * * * *

CROSS-EXAMINATION

Pages 325–326:

By Mr. WILLIAMS:

Q. Mr. Moore, I want to ask you one other question. Did you hear Mr. Douty say at a bargaining conference that the Union was prepared to support the point plan and would support the point plan if we gave them union security, but would not support the point plan if we did not give them union security?

A. I remember this being said: that the union would go in the mill, if you would give us union security, and encourage the

people to learn the point plan and try—I did not hear any statement as to the union or the union committee going in and making them like it. I think that is impossible.

Q. You do remember Mr. Douty told us if we would give you union security, the Union would go into the mill and try to make the people like—what did you say, to——

Trial Examiner Rogosin. Encourage.

The Witness. Encourage.

Q. (Continuing.) Encourage the people to like the point plan; you did hear that proposition?

A. That is true.

Mr. Williams. The witness is with you.

Mr. Purdom. That is all.

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NO. 197

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

CROMPTON-HIGHLAND MILLS, INC.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 197

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

CROMPTON-HIGHLAND MILLS, INC.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered on May 5, 1948 (R. 127), which denied the petition of the Board for enforcement of its order against Crompton-Highland Mills, Inc.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 124-126) is reported at 167 F. 2d 662. The findings of fact, conclusions of law, and order of the Board (R. 59-106) are reported at 70 N. L. R. B. 206.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 5, 1948 (R. 127). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947.

QUESTIONS PRESENTED

1. Whether an impasse in bargaining negotiations between an employer and the statutory representative of the employees justifies the employer in subsequently increasing the employees' rates of pay, without consultation or bargaining with the Union, in an amount greatly in excess of that proposed by the employer during the bargaining negotiations which had terminated a short time previously.

2. Whether an employer's subsequent compliance with an order of the Board justifies a circuit court of appeals in refusing to enforce the Board's order.

3. Whether, as a basis for denying enforcement of an order of the Board, a reviewing court may properly rely upon disputable assertions of fact as to compliance made by the employer, not contained in the record certified to the court by the Board and upon which the Board's order is founded, and without remand to the Board for its initial determination of the facts and its administrative judgment of their consequences.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act and its amendments are set forth in the Appendix, *infra*, pp. 32-36.

STATEMENT

Upon a second amended charge (R. 14-15), duly filed by the Textile Workers Union of America, C. I. O., hereinafter called the Union, the Board on January 31, 1946 issued its complaint alleging, among other things, that Crompton-Highland Mills, Inc., hereinafter called the employer, had on or about January 1, 1946, refused to bargain collectively with the Union as the exclusive representative of all the employees in an appropriate unit with respect to rates of pay and wages, in that, on or about that date, the employer did unilaterally grant wage increases to such employees (R. 12, 10-14). The employer filed an answer denying the allegation and setting forth affirmative matter in

defense (R. 24-27, 23). A hearing upon the complaint was held before a trial examiner of the Board on February 20 and 21, 1946 (R. 70). On March 25, 1946, the trial examiner issued his intermediate report (R. 69-104). On August 21, 1946, the Board issued its decision and order (R. 59-64), which it amended on August 26, 1946 (R. 110-111), and corrected on September 5, 1946 (R. 112-113). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[1]

I. The Facts

In the conduct of its business of manufacturing, selling, and distributing cotton cloth (R. 71; 10, 24), the employer engages about 630 production and maintenance workers (B. A. 41), about one third of whom are paid in accordance with an incentive wage plan, and the remainder of whom are paid on the basis of a straight, hourly wage rate (R. 74; B. A. 51, 14, 20, 22, 157, 115). On August 13, 1945, following an election conducted under Board auspices at which a majority of the production and maintenance employees voted in favor of representation by the Union, the Board certified the Union as the exclusive bargaining representative of the production and maintenance employees who com-

[1] In the following statement record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

prise an appropriate unit (R. 72-73, 100; 11-12, 24; B. A. 27-29).

Ensuing negotiations between the Union and the employer were conducted on August 31, September 12 to 14 and 26 to 28, October 17 to 18, November 7 to 8, and December 19, in 1945 (R. 76, 77; B. A. 32, 36-37). At the outset of negotiations, the Union submitted a proposed contract to the employer which included a request for a general wage increase (R. 76; B. A. 136-149, 3). In addition to the establishment of a minimum hourly wage rate of 65 cents, the contract proposed that a "properly balanced and aligned wage structure" "based on the key occupational wage rates established as guide posts" in the February 20, 1945 Directive Order[2] of the National War Labor Board be negotiated, and that, upon the completion of negotiations and approval of the rate structure, a general increase of ten cents per hour to all employees be granted (R. 76; B. A. 145-146, 3).[3]

At the October 18 meeting, when the Union and the employer "really got into a discussion of the

[2] *In re Twenty-Three Southern Cotton Textile Companies*, 21 War Labor Reports 793.

[3] The War Labor Board guide rates, set by the Southern Textile Commission on August 25, 1945 to clarify the Directive Order (26 War Labor Reports XXIX), comprised hourly wage rates established for key occupational classifications in Southern textile mills designed to afford a basis upon which to negotiate wage adjustments in the Southern textile industry (B. A. 79).

issue" (B. A. 34), the employer rejected the Union's wage proposal in all respects (R. 88; B. A. 14, 62-63). Disclaiming inability to pay as the reason for its rejection (B. A. 34), the employer resisted the wage request upon the asserted ground that its wage scale was presently higher than the prevailing rate in the locality and industry (R. 90; B. A. 6, 16, 17, 37, 54-55, 74). It averred that the average hourly earnings of the employees were already in excess of the War Labor Board guide rates (B. A. 16, 55, 65-66). In professing to find the wage demand unjustified, the employer protested that "It has always been among the first to make wage increases in the community and it always means to be among the first to make wage increases in this community if it can" (R. 90; B. A. 74, 6, 16, 17, 37, 54-55). As its single affirmative contribution, the employer presented to the Union a schedule of its current wages, and it was emphatic that this schedule "was simply a statement of our current rates of pay and did not involve any wage increase whatsoever" (R. 78; B. A. 14, 106-108; 62-63, 69).[1]

Having failed to reach agreement upon wages and other issues, the Union deemed recourse to

[1] The schedule also contained a description of the hourly rated, straight-time occupations which the employer planned shortly to convert to incentive-rated jobs (B. A. 106-108). Apart from minor exceptions, the employer plans eventually to extend its incentive wage plan to embrace all its employees (R. 74; B. A. 50-51, 66-67, 121, 129).

strike action necessary, and on October 22, 1945, it notified appropriate state and federal government officials of its intention to strike (R. 87; 38-39, 5-15). In the usual course, a United States Conciliation Commissioner interceded in the dispute and meetings were held at his request in his office on November 7, continued through November 8, in order to resolve differences (R. 87-88; B. A. 39-40, 34, 61). At these meetings the Union reduced its request for a guaranteed minimum wage from 65 cents to 60 cents per hour, and it reduced its request for a general wage increase for all employees from ten cents to five cents per hour; it continued to request that the wage structure be aligned in accordance with the War Labor Board guide rates (B. A. 6, 150-151, 12). Notwithstanding the Union's concessions, the employer refused to grant any wage increase, reiterating in effect that its customary generosity could be relied upon to assure the grant of a wage increase when it deemed appropriate (R. 88, 90, 60; B. A. 6, 16, 17, 37-38, 63, 77, 89).

Thereafter, on November 27, in accordance with the War Labor Disputes Act,[3] a strike ballot was conducted at which the employees authorized strike action by a vote of 369 to 120 (R. 87; B. A. 40, 5). "Immediately after the strike vote," the membership of the Union "voted unanimously to place

[3] 57 Stat. 163, 167; 50 U. S. C. App. 1501, 1508.

further action" into the "hands" of the negotiating committee which was instructed "to meet again" with the employer "in a final effort to reach a settlement before actually taking strike action" (B. A. 5, 163, 64). Accordingly, the last of the series of meetings was held on December 19, at the Union's behest (R. 88; B. A. 5, 163, 64), at which time the Union presented to the employer "a recapitulation of [its] proposal of November 8 and put down in one place what amounted to about [its] total position on the wage question" (R. 91; B. A. 32, 152-153). At this time, as its first and only counterproposal, the employer offered to insert into the incentive wage plan the ten cents per hour which the incentive rated employees were presently receiving as a straight-time supplement to their wages. By operation of the incentive wage plan, this offer would amount to an increase of 1 to 1½ cents per hour for the incentive rated employees, about one third of the working force (R. 60, 88; B. A. 8-9, 18-19, 34, 39, 64, 72, 98, 99). Because "it did not begin to meet the increase requested by the Union and did not reflect needed conditions in the mill," the Union rejected this proposal (R. 60-61; B. A. 8).

On January 1, 1946, within twelve days of its refusal to consider during negotiations the grant of any wage raise beyond that contained in its limited offer, the employer announced a concededly "unilaterally determined" increase which substan-

tially equalled in amount the increase requested by the Union and which exceeded by far anything which the employer had theretofore offered to the Union (R. 61, 88-89; B. A. 105, R. 26-27; B. A. 11, 21-22, 33-34, 43-49, 74, 88, 92-95, 98-99, 100, 130-135).

Professedly actuated by a "rumor, more or less through the grapevine, that local mills were planning to make wage adjustments," the employer asserted that it "checked" and "found that wage adjustments were going to be made" at unascertained dates and in unascertained amounts, and it forthwith decided to grant a wage increase effective December 31, 1945 (R. 88-90; B. A. 92, 74-75, 94-95). Within the space of an hour on the afternoon of January 1, 1946, without prior notice, the employer summoned to its office the rank and file members of the Union's negotiating committee, but omitted to request the presence of the two Union officials who were chiefly responsible for the conduct of the negotiations on behalf of the committee (R. 88; B. A. 88, 43-44, 46, 93; 2, 32). At the same time that the committee's rank and file members were assembled in the office, the employer caused notices of the wage increase to be posted throughout the plant (R. 89; B. A. 49, 44-45, 46-47, 48-49). The introductory clause of the posted notices, read by the employer to the rank and file committee members during their ensuing ten minute audience, stated (R. 89; 44, 47-48, 131-135):

> In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31st, 1945.

The employer also read to the committee a letter later mailed to Kenneth Douty, the Union's Georgia State Director, one of the two Union officials responsible for steering the committee's work (R. 88-89; B. A. 44, 33, 130). This letter stated:

> In the course of our extended contract negotiations we have repeatedly told you that our mill would be among the first to make wage adjustments in this locality. We have learned that certain of the mills in this locality are about to adjust their wage rates and we are, therefore, making comparable adjustments in our wage rates effective Monday, December 31st, 1945. A copy of the notice which has been posted in the mill today outlining the various rate adjustments is attached hereto.

Upon the completion of the announcement of the unilateral wage increase, the brief session with the members of the committee was ended, and the employer's representative later frankly testified that "the wage adjustment would have been made" notwithstanding "their objections" had they voiced any (R. 89; B. A. 94, 105).

The wage increase covered all production and maintenance employees with the exception of "scrubbers, sweepers and outside labor" (R. 88-89; B. A. 100, 131-134).[*] It amounted to an increase of from 4 to 5 cents per hour for straight-time, hourly rated employees (R. 88; B. A. 131-135, 100). It amounted to an increase of from 5 to 6 cents per hour for incentive-rated employees (R. 88; B. A. 131-135, 98-99).

At the conclusion of the last bargaining conference on December 19, apart from wages, the Union and the employer were in disagreement upon work assignments under the incentive wage plan, insurance provisions, severance pay, vacations, arbitration, union activity upon company time, the preamble to the contract, and union security (R. 88; B. A. 77-78). The employer's witnesses testified that Kenneth Douty, the Union's chief negotiator, had throughout the latter meetings maintained the position "that we might as well quit talking about a contract because he would never sign any contract, nor ever agree to any contract, irrespective of any other provisions of the contract, unless it included provisions satisfactory to him for the security and protection of the union and the collection of the Union's dues" (R. 90; B. A. 63, 64, 69,

[*] Shortly after the announcement of the wage increase, a sweeper who had received no increase complained to one of the members of the negotiating committee: "he wanted to know how come they didn't get a raise, and he said his flour cost him just as much a sack as mine did" (B. A. 47).

82-83, 91-92). Because of this, the employer assumed that the reopening of negotiations would be futile, and that resource to unilateral action was appropriate (R. 90; B. A. 93-94).

Doufy and five other members of the negotiating committee squarely denied, however, that the Union had at any time during negotiations made union security the indispensable precondition to agreement (R. 90-91; B. A. 80-84, 100-105).[7] Stating its belief that inclusion of union security in a contract was desirable "as a sign of good faith between the parties" (B. A. 80, 76), the Union, however, during negotiations pressed for "some form of union security" (R. 90; B. A. 80, 101). In its proposed contract submitted to the employer as a basis upon which to initiate negotiations, the Union had included a request for a union shop and check-off of dues and initiation fees (R. 76; B. A. 144). During the course of negotiations the Union progressively reduced its opening demand in successive stages from a request for a union shop to a provision for maintenance of membership, and at one point indicated a willingness to settle for the deduction of union dues upon the individual authorization of employees (R. 88; B. A. 80, 78-79,

[7] Doufy testified (B. A. 80): "Now we at no time stated that if we didn't get this particular element of the contract that we would have no contract at all. As far as we were concerned, the matter was open for bargaining all along the way on the issues we hadn't arrived at."

70¢.[8] The employer, however, refused to grant any form of union security (R. 88; B. A. 72-74, 78-79, 85, 89, 90).

II. The Board's Decision and Order

The Board found that the employer, "in violation of Section 8 (1) and (5) of the Act, failed to bargain collectively with the Union as the statutory representative of the . . . employees . . . by granting a wage increase to its employees without consulting the Union" (R. 60). By its conduct the employer failed to afford "the Union an opportunity to negotiate with respect to the amount of the increase, the employees to whom the increase would be applicable, the effective date of the increase or any of the factors normally envisaged in the collective bargaining process" (R. 89).

In summarizing the pertinent facts, the Board found that the employer, "during the course of negotiations with the Union, refused to accede to the Union's wage demands, and it was not until their last conference on December 19, 1945, that the [employer] made its first and only counterproposal of approximately 1 to 1½ cents an hour raise, which the Union rejected. Thereafter, the [employer] made no further effort to settle the wage dispute but, instead, on January 1, 1946, only 12 days later, granted its employees a substantially larger in-

[8] The Union also offered to provide the employer with clerical assistance in the deduction of dues (B. A. 73).

crease than that previously offered to the Union, without consulting the Union or affording it an opportunity to negotiate with respect thereto." The Board concluded that "such action, taken as soon after the Union was attempting through the bargaining process to reach an agreement with the [employer], among other things, on wages, clearly shows that the [employer] was not acting in good faith during the negotiations, and is manifestly inconsistent with the principle of collective bargaining" (R. 60-61).

The Board also rejected the employer's "attempted justification for its action on the ground that the Union broke off negotiations on December 19 and that the [employer] was therefore relieved of the obligation to deal with it" (R. 113, 61). The Board found that the employer concededly had "never proposed to the Union as a possible basis of agreement a wage increase comparable to that granted on January 1, 1946" (R. 113, 61). It stated that even if the Union and the employer "had reached an impasse in their negotiations, this obviously could not affect the Union's status as majority representative," and its consequent continuing "right to bargain with respect to such increase," which was materially in excess in amount and coverage from the increase proffered to the Union during negotiations. (R. 91-92).

With respect to the employer's contention that the Union's insistence upon union security pro-

cluded agreement upon a contract, the Board found that "the preponderance of the credible evidence does not support the [employer's] position that the Union had, in effect, presented an ultimatum that no contract would be consummated which did not afford union security" (R. 90-91), and that "the record fails to support the [employer's] contention that the Union's representatives assumed an unequivocal position at the last meeting which foreclosed further bargaining concerning wages or other terms or conditions of employment" (R. 61).

Finally, the Board ruled that neither anticipated wage increases by the employer's competitors in the labor market, nor the Union's taking of a strike vote, absolved the employer of its continuing duty to deal with the Union (R. 89-90, 92).

The Board entered an order requiring the employer to cease and desist from refusing to bargain with the Union "by taking action without prior consultation with said organization, with respect to rates of pay, wages, hours of employment" and "in any other manner interfering with the efforts" of the Union to bargain; upon request, to bargain with the Union; and to post appropriate notices (R. 62-64).

III. The Proceeding in the Court Below

On December 8, 1947, the Board filed in the court below a petition to enforce the Board's order (R.

1-5). In its answer to the Board's petition, dated January 10, 1948, the employer alleged (R. 121):

> "that since the hearing before the Trial Examiner and the issuance of the order sought to be enforced, [the employer] has bargained with the Union with respect to two general increases in wages and has reached tentative agreements with the Union with respect to all proposed provisions of a collective bargaining contract except the provisions, demanded by the Union, with respect to the security of the Union and the deduction of the Union's dues from the wages of the employees; and that on September 19, 1946, [the employer] offered to sign the contract which had been tentatively agreed upon in collective bargaining, and that the Union refused to sign said contract solely because [the employer] would not contract to protect the Union against the anticipated unwillingness of the employees to maintain membership in and pay dues to the Union"

In its brief to the court below (p. 49), the employer further averred that it "has fully complied with said Order, and that said order has fully served its intended purposes and is now stale."

On May 5, 1948, the court below issued its opinion (R. 124-126), and on the same day entered its judgment (R. 127), in which it denied the petition of the Board for enforcement of its order. The full discussion in the court's opinion states briefly (R. 125-126):

> . . . the only unfair labor practice found by the Board was the granting of a wage increase [by the employer] to its employees without consulting the Union.
>
> It appears, however, to be undisputed in the evidence of Mr. Douty, the representative of the Union in the State, that when the wage increase was granted collective bargaining had broken down, the Union had withdrawn from further bargaining in connection with the matter, and a strike vote had already been called. The evidence also seems to be without dispute that the raise in wages was made by the [employer] to meet competition by other mills in that section. Under these circumstances it does not appear to be an unfair labor practice to grant a general increase in wages to the employees without consulting the Union. On the strength of this view, and in the light of the earnest assertions by the [employer] that it has complied with the Board's previous order and has subsequently bargained with the Union in relation to two general increases in wages, the petition of the Board for enforcement of the order will be denied.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that an impasse in bargaining negotiations between the employer and the statutory representative authorizes the employer to institute unilateral changes in rates of pay, different from

and in excess of those proposed by it to the statutory representative during negotiations.

2. In holding that the taking of a strike vote by the statutory representative authorize the employer to effectuate unilateral changes in rates of pay.

3. In holding that anticipated wage increases by competitors of the employer in the labor market authorizes the employer to effectuate unilateral changes in rates of pay.

4. In failing to accept the Board's findings that the employer had not bargained in good faith.

5. In relying upon compliance by the employer with the order of the Board as a reason for denying enforcement of the order.

6. In relying upon disputable assertions of fact made by the employer, not contained in the record certified to the court by the Board and upon which the Board's order is founded, as a basis for denying enforcement of the Board's order.

7. In failing to enforce the order of the Board.

REASONS FOR GRANTING THE WRIT

The decision of the court below permits unilateral employer action in circumstances which substantially impair the right to bargain collec-

tively guaranteed employees under the Act. Further, it impedes effective proscription of unfair labor practices by treating compliance with an order of the Board as grounds for denying its enforcement. In these important respects, the decision below is in conflict with decisions of this Court and the other circuit courts of appeals and presents questions of public importance in the administration of the Act. In addition, the court below erroneously relies upon disputable assertions of fact made by the employer, not part of the record certified by the Board to the court and upon which the Board's order is founded as a basis for denying enforcement of the Board's order.

1. Section 8(5) of the National Labor Relations Board Act requires an employer to bargain collectively with the representative of his employees. In *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, this Court held that an employer committed an unfair labor practice when it unilaterally, without consulting the bargaining agent, requested permission from the National War Labor Board to increase wages. There this Court stated (326 U. S. at 384-385):

> Employer action to bring about changes in wage scales without consultation and negotiation with the certified representative of its employees cannot, we think, logically or realistically, be distinguished from bargaining with individuals or minorities. * * *

> Such unilateral action minimizes the influence of organized bargaining. It interferes with the right of self-organization by emphasizing to the employees that there is no necessity for a collective bargaining agent.

In conflict with this principle, the decision of the court below permits the employer unilaterally to grant a five cents per hour increase in wages to substantially all its employees, the same amount requested by the Union and denied by the employer twelve days earlier, notwithstanding the fact that during negotiations the employer limited its offer of an increase to one and one half cents per hour for one third of the working force, a raise markedly less in amount and coverage from that unilaterally made. The crux of the decision below, therefore, is to sanction a unilateral wage increase in excess of the wage offer submitted by the employer to the Union during negotiations. Because the wage increase unilaterally made had never been proferred by the employer to the Union for acceptance, rejection, or modification through the collective bargaining process, it stands as an alteration of employment conditions effectuated without antecedent bargaining in relation to it. In consequence, the employer's conduct, permitted by the court below, contravenes the principle expressed by this Court in the *May Department Stores* case proscribing "Employer action to bring about changes in

wage scales without consultation and negotiation with the certified representative of its employers."

The court below relies for its contrary conclusion upon the ground that "when the wage increase was granted collective bargaining had broken down, the Union had withdrawn from further bargaining in connection with the matter, and a strike vote had already been called" (R. 125). The error of the court lies in its misconception of the circumstances countenancing unilateral conduct. After an employer and the exclusive bargaining representative have bargained to an impasse in good faith upon wages or other terms of employment, the employer may unilaterally institute those changes which the statutory representative after notification and consultation found unacceptable.[*] The collective bargaining obligation does not require congealment of the employment structure if the employer and the

[*] *Matter of W. W. Cross and Company*, 77 N. L. R. B. No. 188, 22 L. R. R. M. 1331 (where the union effectively demonstrates to the employer that there is no possibility of reaching an agreement on wages through the normal process of collective bargaining in the event that the employer is unwilling to grant the union's wage demands in full, the employer may unilaterally grant the lesser increase to which it is willing to accede); *Matter of Exposition Cotton Mills Company*, 76 N. L. R. B. No. 183, 21 L. R. R. M. 1319 (announcement by employer of an eight cent increase after its rejection by the union); *Matter of Southern Prison Company*, 46 N. L. R. B. 1268, 1269 (grant of individual wage increases after the union refused to bargain as to individual increases and insisted upon a general increase).

exclusive bargaining representative cannot after good faith negotiation strike a bargain. Conversely it necessarily excludes, if it is to retain its force, the institution of unilateral changes different from or in excess of those which through submission to the collective bargaining process have been tested and proven by genuine negotiation to be an inadequate basis for mutual accord.

In the circumstances of this case, the employer's grant of the same wage increase, one and one-half cents to one-third of the working force, offered to and found unacceptable by the Union after negotiation, would have constituted permissible unilateral conduct. But where, as here, the wage increase granted was in excess of that offered to the Union, the impasse in negotiations did not condone unilateral action beyond that upon which negotiations had deadlocked. As to such a new proposal, the situation is the same as if there had been no bargaining. An impasse cannot be presumed to continue as a barrier to agreement after the conditions which induced it may have been dissipated by the employer's own determination to make a significant change in his position. A genuine impasse reflects the futility and condones the discontinuance of further bargaining so long as the circumstances impelling the deadlock remain unchanged,[10] but when the circumstances which induced the impasse have

[10] Cf. *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342-343.

materially changed, the basis for the impasse ceases to exist and suspension of negotiations and unilateral action in reliance upon it is no longer justified. Accordingly, where, as here, an employer by his action changes the status of the negotiations, it becomes the employer's affirmative duty to reinstitute bargaining and "to submit any wage offer that if desired to make to the certified bargaining representative for negotiation; absent such submission, an impasse with respect thereto could not have been reached". *Matter of Craddock-Terry Shoe Corporation*, 73 N. L. R. B. 1339, 1342.

In failing to limit the employer's right to act unilaterally after a bargaining impasse to a matter on which the parties had deadlocked, the decision below is in probable conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. 2d 134 (C. C. A. 4), certiorari denied, 302 U. S. 731. In the latter case, the employer refused to reinstitute negotiations with the union upon its request because efforts to bargain about a month earlier "had resulted in failure and an impasse in the negotiations had been reached" (91 F. 2d, at 139). In the interval, however, "the status of the controversy had undergone considerable change . . ." (*ibid*). In sustaining the Board's view that the employer had refused to bargain collectively, the Fourth Circuit held in substance that "the statute enjoining

collective bargaining would largely fail of its purpose" were "the failure of negotiations to result in agreement in June" deemed to so clearly preclude "the possibility of agreement in July under the changed circumstances then existing" as to warrant discontinuance of further negotiations (91 F. 2d, at 140). In like fashion in the instant case, "the statute enjoining collective bargaining would largely fail of its purpose" if unilateral employer action may be predicated upon an impasse the basis of which may be dispelled by the very circumstance that the employer is presently willing to grant an advantage which it earlier withheld, and which was material in the bargaining situation inducing the deadlock. Unlike the Circuit Court of Appeals for the Fourth Circuit, however, the court below failed to perceive that unilateral employer action, like the refusal to reinstitute bargaining, cannot be justified by an impasse which is spent by changed circumstances.

The decision of the court below, in its condonation of unilateral action in reliance upon the fact that "a strike vote had already been called" (R. 125), is in probable conflict with both the *Jeffery-DeWitt* case and the decision of the Circuit Court of Appeals for the First Circuit in *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. 2d 874 (C. C. A. 1), certiorari denied, 313 U. S. 595. The necessary premise of the court below is that the bargaining agent's plan to resort to strike action to

enforce its requests diminishes the employer's consequent duty to abstain from unilateral conduct. Both the First Circuit and the Fourth Circuit have held, however, that *actual* recourse to strike action does not relieve the employer of its continuing duty to negotiate with the statutory representative and to respect its status (118 F. 2d, at 885-887 (C. C. A. 1); 91 F. 2d at 140 (C. C. A. 4)). *A fortiori*, in the instant case, the statutory representative's unimaterialized plan to strike does not affect its status. On the contrary, the period preceding a strike is one during which intensified efforts to explore the potentialities for accord through collective bargaining must be exhausted in order to accomplish the purpose of the Act to avoid or mitigate needless industrial strife.

Finally, the court below parenthetically justifies the employer's unilateral action upon the ground "that the raise in wages was made by the [employer] to meet competition by other mills in that section" (R. 125). But this circumstance did not require the employer to act unilaterally.[47] There is no reason to believe that consultation with the union as to the granting of this increase would have caused undue delay; and if it did, a statement of

[47] The employer did not contend that the information as to forward wage adjustments in competing mills constrained it to effectuate a *unilateral* wage increase. Its position was rather that the Union's insistence upon union security purportedly made resort to collective bargaining futile, and in consequence conferred recourse to unilateral action.

the employer's intention to grant any increase ultimately adopted retroactively would have protected the interest of the employer and the employees.

2. In denying enforcement of the Board's order, the court below, without particularization, relied upon "the earnest assertions by the [employer] that it has complied with the Board's previous

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In addition to the Board's position that an impasse does not justify unilateral employer action in a form in excess of the proposals offered by the employer during the negotiations culminating in the deadlock, the Board found, as an alternative ground for decision, that the employer had not been bargaining in good faith during the negotiations. The Board inferred lack of good faith from the speedy grant of the unilateral wage increase in substantially the same amount requested by the Union and denied by the employer only twelve days earlier. It seems too plain for anything but statement that an employer may not frustrate the collective bargaining process by its failure to negotiate in good faith, and then "profit from a stubborn refusal to abide by the law" (*Franks Brothers Company* v. *National Labor Relations Board*, 321 U. S. 702, 706) by instituting unilateral changes in employment relations in reliance upon a resultant impasse. We do not rely upon the failure of the court below to accept the Board's finding as to this issue as ground for certiorari, but we reserve the right to rely on the finding if the case is heard on the merits.

Nor did the court below advert to the employer's contention that its unilateral action upon wages was justified because of the Union's purported unequivocal position that it would not consent to any agreement, whatever its terms, which did not contain a provision for union security, a matter to which the employer would not accede. The Board had disposed of this contention upon the factual ground that the Union had not in fact foreclosed agreement by unbending insistence upon union security. See pp. 14-15, 11-13, *supra*.

order and has subsequently bargained with the Union in relation to two general increases in wages." (R. 126). In *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261, 271, this Court explicitly held that compliance with the Board's order is without relevance to the propriety of its enforcement. There this Court stated that "an order of the character made by the Board, lawful when made, does not become moot because it is obeyed or because changing circumstances indicate that the need for it may be less than when made." Notwithstanding discontinuance of the proscribed practice through voluntary compliance, the Board is "entitled to bar its resumption" by invoking compulsive judicial power in aid of its order. Compare: *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 236; *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260.

To permit respondents to defeat enforcement of Board orders by showing compliance after issuance of the order and the closing of the record would result in an endless cycle of litigation and impair the workability of the act. The conference report shows that Congress deliberately omitted from the National Labor Relations Act language contained in the original Federal Trade Commission Act (38 Stat. 717, 720), which had been construed by some circuit courts of appeals as "requiring the Commission to show in every case that

its order is being disobeyed before the court will even proceed to consider the matter on its merits, or render a decree enforcing the Board's order". (H. Rep. 1371, 74th Cong., 1st Sess., p. 5.)

In conformity with the National Labor Relations Act's purpose and the decision of this Court, the other circuit courts of appeals have uniformly held that discontinuance of the proscribed conduct through voluntary compliance with the Board's order is immaterial to its enforcement and have refused to litigate questions of compliance as a condition precedent to entry of an enforcement de-

[15] Illustrative of the decisions in the Circuit Courts are the following cases:

First Circuit: *National Labor Relations Board* v. *Draper Corporation*, 159 F. 2d 294, 297; *National Labor Relations Board* v. *L. H. Hamel Leather Co.*, 135 F. 2d 71, 72-73; *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. 2d 249, 252.

Second Circuit: *National Labor Relations Board* v. *Acme Air Appliance Co.*, 117 F. 2d 417, 421.

Third Circuit: *National Labor Relations Board* v. *McLain Fire Brick Co.*, 128 F. 2d 393, 394; *National Labor Relations Board* v. *Condenser Corporation*, 128 F. 2d 67, 81.

Sixth Circuit: *National Labor Relations Board* v. *Toledo Desk & Fixture Company*, 158 F. 2d 426; *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. 2d 618, 619; *National Labor Relations Board* v. *Cleveland Cliffs Iron Co.*, 133 F. 2d 295, 300.

Seventh Circuit: *National Labor Relations Board* v. *Bachelder*, 125 F. 2d 387, 388; *National Labor Relations Board* v. *Gerling Furniture Manufacturing Co., Inc.*, 103 F. 2d 663.

Eighth Circuit: *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 239, certiorari denied,

cree.[13] The decision of the court below, in its reliance upon compliance as a basis for denying enforcement of the Board's order, conflicts with decisions of this Court and the other circuit courts of appeals and entails seriously detrimental consequences to the Act's enforceability.

3. Assuming compliance with the Board's order to be generally material to its enforcement, the court below is in further error in accepting as fact the employer's assertions with respect to its compliance and in presuming without preliminary recourse to the Board's administrative judgment that compliance is relevant to deny enforcement in the special circumstances of a particular case.

The employer's averments as to its compliance are contained in its brief and in its answer to the Board's petition for enforcement. They are not part of the record certified by the Board to the court below and upon which the Board's order is based. The danger of accepting such unilateral as-

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June 14, 1948, No. 785, Oct. Term, 1947; *National Labor Relations Board* v. *Swift & Company*, 129 F. 2d 222, 224.

Ninth Circuit: *National Labor Relations Board* v. *Lettie Lee, Inc.*, 140 F. 2d 243, 250 (C. C. A. 9); *National Labor Relations Board* v. *American Potash and Chemical Corp.*, 98 F. 2d 488.

District of Columbia: *National Labor Relations Board* v. *National Laundry Co.*, 138 F. 2d 589, 590.

For prior decisions in the court below in accord with these views, see, *National Labor Relations Board* v. *Hills Bros. Co.*, 161 F. 2d 179, 180; *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. 2d 497.

sertions, unsupported by evidence, is plain. In this case, a representative of the Union sought during the oral argument before the Board an opportunity to deny the employer's assertion that it had bargained in good faith since the closing of the record. (Transcript of oral argument before the Board, pp. 25-26, 29).

Moreover, in its acceptance of the employer's unsupported averments outside the record, the decision below conflicts with this Court's decision in *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 249-250. There this Court stated that "The statute expressly deprives the reviewing court of power to consider facts thus brought to its attention. The case must be heard on the record as certified by the Board. The appropriate procedure to add facts to the record as certified is prescribed in § 10 (e) of the Act." Section 10 (e) of the Act, as amended, in substantially the same terms as prior to the amendment, permits the court to remand a proceeding to the Board in certain circumstances for the taking of additional evidence and the entry of new findings. Acceptance by the court of respondent's bare assertions without remand to the Board to ascertain the facts effectively defeats the statutory objective of reposing the fact-finding function in the Board and of according finality to its conclusions within the scope of permissible review.

Apart from the failure to remand to the Board for the ascertainment of the facts as to compliance, the court below was in equal error in failing to remand to secure the Board's administrative judgment of the consequences of compliance in the special circumstances of the particular case. Assuming the general materiality of compliance status as a condition precedent to obtaining an enforcement decree, each case presents individual problems as to the extent to which compliance makes entry of a decree enforcing the Board order necessary.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

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August, 1948.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. § 151, *et seq.*) are as follows:

* * * * *

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial dis-

putes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

[SEC. 10] (e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such

person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. * * *

The relevant provisions of Section 10 (e) the National Labor Relations Act, as amended by Section 101 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C. Supp. I, 141, *et seq.*) are as follows:

* * * * * *

* * * If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. * * *

U. S. GOVERNMENT PRINTING OFFICE 1948 — 709048/P 0156

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 197

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CROMPTON-HIGHLAND MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

I. THE EMPLOYER'S CONTENTION THAT THE UNION DID NOT REQUEST TO BARGAIN UPON THE UNILATERALLY DETERMINED WAGE INCREASE IS WITHOUT MERIT

To condone its unilateral grant of a wage increase without antecedent bargaining upon it with the Union, the employer relies principally upon the absence of a request by the Union to bargain with respect to this specific increase, a unilaterally-determined action unknown to the Union until the employer put it into effect (Br., pp. 31–43). In essence, the employer contends that the Union must anticipate any change in terms and conditions of employment the employer

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may decide to make before the employer can be held responsible for failure to bargain with the Union prior to effectuating the change. To support this position, the employer misreads the meaning of *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 297–298, and *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 343–344 (Br., pp. 32–33).

In our main brief (p. 34, n. 22) we have shown that the principle of these cases is inapplicable to the present situation. In both the *Columbian* and the *Sands* cases a stalemate in negotiations had been reached. In the *Columbian* case, the employer thereafter resumed operation of its struck plant (305 U. S. at 295); in *Sands*, after the failure of negotiations and the lawful discharge of the employees for failing to abide by their contract, the employer resumed the operation of its closed plant in accordance with an agreement reached with a new bargaining representative designated by a majority of the new employees (306 U. S. at 338–339, 344). *In neither case did the employer undertake to change the status quo by any unilateral action different from that which it proposed and which was fully explored without success during the negotiations.*

In a situation such as was involved in the *Columbian* and *Sands* cases, if the union desires to bargain, the union must request a resumption

of negotiations, because in such a situation, it is the union, not the employer, which seeks a change in the *status quo* as reflected in a stalemated negotiation. But where, as here, it is the employer which seeks a change in the *status quo* by changing its position, it is the employer which is required to reinstitute bargaining.

In short, whether the employer or the union is required to present a request to bargain to the other side depends upon which of the two is initiating changes in employment terms. To insist that the initiative always devolves upon the union, even where it is the employer which changes its stand, is to require the union to exercise prophetic divination as to the employer's unstated position as a condition of participation in collective bargaining.

II. THE EMPLOYER'S ALLEGATIONS AS TO FACTS ARISING AFTER THE HEARING DO NOT AFFECT THE PROPRIETY OF ENFORCING THE BOARD'S ORDER

The employer alleges the existence of a state of facts arising after the close of the hearing before the trial examiner which are asserted to affect the propriety of enforcing the Board's order at the present time (Br., pp. 43–52). The allegations reduce themselves to an assertion that negotiations between the Union and the employer, held after the hearing, were unsuccessful because of the presumed unreasonableness of the Union's bargaining positions. The employer concludes that the Union "so completely frustrated [the

employer's] repeated and earnest efforts to bargain with the Union that [the employer] should not now be ordered to bargain with the Union." (Br., p. 44).

The circumstances alleged are wholly immaterial to the propriety of enforcing the Board's order. The unreasonableness which the employer imputes to the Union rests upon the employer's belief that the Union placed too much emphasis upon union security during the negotiations. But that factor is no more relevant to the negotiations which were carried on after the hearing than it was to the negotiations carried on before the hearing. Whatever the Union's emphasis upon its security, it does not give the employer *carte blanche* to refuse to treat with it, which the employer in effect requests (See the Board's main brief, pp. 37–39). It could as well be said that the employer's "adamant" (B. A. 73) position against any form of union security was unreasonable.

It is not the function of the employer to monitor "the services of the union, whether good or bad,"[1] and so long as a majority of the employees desire representation by the Union, it is incumbent upon the employer to continue to recognize it. In short, the employer's duty to bargain does not turn on its appraisal of the worth of the Union, but upon the will of the em-

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[1] *National Labor Relations Board* v. *Acme Air Appliance Company, Inc.*, 117 F. 2d 417, 420 (C. C. A. 2).

ployees who have ample means of changing or abandoning union representation should they be dissatisfied with it.[2] The employer's contention is no different in substance from that rejected by this Court in *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344. In rejecting a contention that the strikers' continuing employee status during a strike depended on the reasonableness of the strike, this Court stated:

> That there were pending negotiations for the execution of a contract touching wages, and terms and conditions of employment of point-to-point operators cannot be denied. But it is said the record fails to disclose what caused these negotiations to fail so as to show that the [employer] was in any wise in fault in failing to comply with the union's demands; and, therefore, for all that appears, the strike was not called by reason of the fault of the [employer]. * * * The wisdom, or unwisdom, of the men, their justification, or lack of it, in attributing to [the employer] an unreasonable or arbitrary attitude in connection with the negotiations, cannot determine whether, when they struck, they did so as a consequence of or in connection with a current labor dispute.

[2] It may be noted that when the employees voted to strike by a large majority, union security was one of the issues submitted to them (B. A. 38–39). Moreover, no contract negotiated by the Union is binding upon the employees until they vote to accept it (Board's main brief, p. 4, n. 2).

Just as the employee status of strikers does not turn on the wisdom or unwisdom of their action, so too, the representative status of the Union does not turn on the wisdom or unwisdom of their bargaining positions in negotiations. Although negotiation with the Union never results in a contract, so long as the Union remains the bargaining representative of its employees, the employer remains under a duty to bargain collectively. Since the only allegedly changed circumstance alleged by the employer is the continued failure to reach a contract, there is no need for a remand to take these facts, and contrary to the employer's statement (Br., pp. 27, 29, 51), the Board has never sought a remand.

III. THE BOARD'S ORDER IS NOT TOO BROAD IN SCOPE

The Board's order requires the employer to cease and desist from refusing to bargain with the Union "by taking action without prior consultation with said organization, with respect to rates of pay, wages, hours of employment, and other conditions of employment" and "in any other manner interfering with the efforts of" the Union to bargain; and, upon request, to bargain with the Union (R. 63). The employer contends "that the order of the Board, if it is to be enforced, should be restricted to the making of general increases in wage rates without consulting the Union" (Br., p. 61). Thus, the employer would restrict the order against it to the

precise form which its infraction took, namely, the unilateral grant of a wage raise. In order to sustain this contention the employer needs not only to upset the Board's alternative finding that the employer "was not acting in good faith during the negotiations" (Board's main brief, pp. 14, 42–44), but also to show that its unilateral action with respect to wages gives no reason to anticipate that it may also take unilateral action with respect to other subjects of collective bargaining.

The Board's order is geared entirely to the employer's breach of its collective bargaining obligation, and is no more onerous in substance than those approved by this Court in *National Labor Relations* v. *Express Publishing Co.*, 312 U. S. 426, 430, 439, and in *May Department Stores Company* v. *National Labor Relations Board*, 326 U. S. 376, 386–393. In *May Department Stores*, where the unfair labor practice involved a "refusal to bargain" and a unilateral "salary increase," "intertwined" with the judicial test of a "unit asserted to be certified improperly," this Court sanctioned an order enjoining the employer, not only from refusing to bargain, but also from engaging in "any other acts in any manner interfering with the representative's efforts to negotiate for or represent the above named employees as bargaining agent." (326 U. S. at 376, 388.) As stated in the *Express* case, "To justify an order restraining other

violations, in addition to the precise infraction found, "it must appear that they bear some resemblance to that which the employer has committed or," distinctively, "that danger of their commission in the future is to be anticipated from the course of his conduct in the past" (312 U. S. at 437). See also, *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 51–52. Where, as here, the unilateral grant of a wage increase was found to be a violation, the restraint of unilateral action with respect to other subjects of collective bargaining at the least does "bear some resemblance" to the violation found, and alternatively, the "danger" of employer recourse to unilateral action on other subjects "in the future" may "be anticipated" from the known recourse to unilateral action on wages "in the past." Indeed, the employer in this case does not suggest that its purported right to unilateral action, in the circumstances in which it was exercised, is limited to wages alone. Plainly, where "a clear violation of law" is disclosed, "it is not necessary that all of the untravelled roads to that end be left open and that only the worn one be closed." *International Salt Co.* v. *United States*, 332 U. S. 392, 400.

Nor can the employer defeat the scope of the order, as it seeks to do (Br., pp. 39–61), by conjuring hypothetical hardship to it in the application of the order to unmaterialized facts and imaginary situations. It can hardly be assumed

that the Board will construe the order in a concrete case in disregard of its own earlier decision or of the industrial realities of plant operation. The Board's order in this case steers a proper course between the rock of excessive specificity, which invites evasion of purpose, and the whirlpool of entrapping indefiniteness, which fails to afford any guide to conduct. Compare *International Salt Co.* v. *United States*, 332 U. S. 392, 400–402, with *J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332, 341.

Respectfully submitted.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 197

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CROMPTON-HIGHLAND MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 124–126) is reported at 167 F. 2d 662. The findings of fact, conclusions of law, and order of the Board (R. 59–106) are reported at 70 N. L. R. B. 206.

JURISDICTION

The judgment of the court below was entered on May 5, 1948 (R. 127). The petition for a writ of certiorari was filed on August 4, 1948, and was granted on October 11, 1948. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947.

QUESTIONS PRESENTED

1. Whether an impasse in bargaining negotiations between an employer and the statutory representative of the employees justifies the employer in subsequently increasing the employees' rates of pay, without consultation or bargaining with the Union, in an amount greatly in excess of that proposed by the employer during the bargaining negotiations which had terminated a short time previously.

2. Whether an employer's subsequent compliance with an order of the Board justifies a court of appeals in refusing to enforce the Board's order.

3. Whether, as a basis for denying enforcement of an order of the Board, a reviewing court may properly rely upon disputable assertions of fact as to compliance made by the employer, not contained in the record certified to the court by the Board and upon which the Board's order is founded, and without remand to the Board for its initial determination of the facts and its administrative judgment of their consequences.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act and its amendments are set forth in the Appendix, *infra*, pp. 55–59.

STATEMENT

Upon a second amended charge (R. 14–15), duly filed by the Textile Workers Union of America, C. I. O., hereinafter called the Union,

the Board on January 31, 1946 issued its complaint alleging, among other things, that Crompton-Highland Mills, Inc., hereinafter called the employer, had since August 31, 1945, refused to bargain collectively in good faith with the Union as the exclusive representative of all the employees in an appropriate unit with respect to rates of pay and wages, and on January 1, 1945, failed to bargain collectively by unilaterally granting wage increases to such employees (R. 12, 10–14). The employer filed an answer denying the allegations and setting forth affirmative matter in defense (R. 24–27, 23). A hearing upon the complaint was held before a trial examiner of the Board on February 20 and 21, 1946 (R. 70). On March 25, 1946, the trial examiner issued his intermediate report (R. 69–104). On August 21, 1946, the Board issued its decision and order (R. 59–64), which it amended on August 26, 1946 (R. 110–111), and corrected on September 5, 1946 (R. 112–113). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[1]

I

THE BOARD'S FINDINGS OF FACT

In the conduct of its business of manufacturing, selling and distributing cotton cloth (R. 71;

[1] In the following statement record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

10, 24), the employer engages about 630 production and maintenance workers (B. A. 41), about one third of whom are paid in accordance with an incentive wage plan, and the remainder of whom are paid on the basis of a straight, hourly wage rate (R. 74; B. A. 51, 14, 20, 22, 15, 30, 157). On August 13, 1945, following an election conducted under Board auspices at which a majority of the production and maintenance employees voted in favor of representation by the Union, the Board certified the Union as the exclusive bargaining representative of the production and maintenance employees who comprise an appropriate unit (R. 72–73, 100; 11–12, 24, B. A. 27–29). The Union appointed a negotiating committee composed of nine or ten members, two of whom, Kenneth Douty and Clara Kanun, were not employed at the plant but were respectively Georgia state director of the Union and field representative of the Union (R. 81, n. 12, 88, 96; B. A. 35, 43–44, 2, 102, 104).[2] Kanun handled the "wage end of the negotiations" on behalf of the Union (B. A. 2).

Ensuing negotiations between the Union and the employer were conducted on August 31, September 12 to 14 and 26 to 28, October 17 to 18,

[2] The Union's method of negotiation, of which the employer was aware, required that an agreement reached between the negotiating committee and the employer meet the minimum standards set by the national office of the Union and also be submitted to and approved by "the local body of people to whom it applies" before final adoption (B. A. 36).

November 7 to 8, and December 19, in 1945 (R. 76, 77; B. A. 32, 36–37). At the outset of negotiations, the Union submitted a proposed contract to the employer which included a request for a general wage increase (R. 76; B. A. 29, 136–149, 3). In addition to the establishment of a minimum hourly wage rate of sixty-five cents, the contract proposed that a "properly balanced and aligned wage structure" "based on the key occupational wage rates established as guide posts" in the February 20, 1945 directive order[3] of the National War Labor Board be negotiated, and that, upon the completion of negotiations and approval of the rate structure, a general increase of ten cents per hour to all employees be granted (R. 76; B. A. 29, 145–146, 3).[4]

At the October 18 meeting, when the Union and the employer "really got into a discussion of the issue" (B. A. 34), the employer rejected

[3] *In re Twenty-Three Southern Cotton Textile Companies*, 21 War Labor Reports 793. The original order set guide rates for only five occupational classifications in the southern textile industry. A subsequent wage formula issued by the Southern Textile Commission, on August 25, 1945, fixed guide rates for thirty-eight classifications (26 War Labor Reports XXIX). These guide rates were hourly wage rates designed to afford a basis upon which unions and employers could negotiate wage adjustments. The record here shows that the parties referred to these rates during their negotiations (B. A. 79).

[4] In requesting hourly wage increases for all employees, the Union during negotiations made clear that it did not object to the increase for incentive-rated employees being achieved by adjustments in the operation of the incentive

the Union's wage proposal in all respects (R. 88; B. A. 14, 62–63). Disclaiming inability to pay as the reason for its rejection (B. A. 34), the employer resisted the wage request upon the asserted ground that its wage scale was presently higher than the prevailing rate in the locality and industry (R. 90; B. A. 6, 16, 17, 37, 54–55, 74). It averred that the average hourly earnings of the employees were already in excess of the War Labor Board guide rates (B. A. 16, 55, 65–66). In professing to find the wage demand unjustified, the employer protested that "It has always been among the first to make wage increases in the community and it always means to be among the first to make increases in this community if it can" (R. 90; B. A. 74, 6, 16, 17, 37, 54–55). As its single affirmative contribution, the employer presented to the Union a schedule of its current wages, and it was emphatic that this schedule "was simply a statement of our current rates of pay and did not involve any wage increase whatsoever" (R. 78; B. A. 14, 30, 106–108, 62–63, 69).[5]

Having failed to reach agreement upon wages and other issues, the Union deemed recourse to

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wage plan (B. A. 24–25, 29, 145–146, 30, 150–151, 31, 152–153, 154–156, 6, 8–9, 20–21). The increase for the hourly rated employees would of course be a straight-time addition to their wages.

[5] The schedule also contained a description of the hourly-rated, straight-time occupations which the employer planned

strike action necessary, and on October 22, 1945, it notified appropriate state and federal government officials of its intention to strike (R. 87; B. A. 38–39, 5, 15). In the usual course, a United States Conciliation Commissioner interceded in the dispute, and meetings were held at his request in his office on November 7, continued through November 8, in order to resolve differences (R. 87–88; B. A. 39–40, 34, 61). At these meetings, the Union reduced its request for a guaranteed minimum wage from sixty-five cents to sixty cents per hour, and it reduced its request for a general wage increase for all employees from ten cents to five cents per hour; it continued to request that the wage structure be aligned in accordance with the War Labor Board guide rates (B. A. 6, 30, 150–151, 12). Notwithstanding the Union's concessions, the employer refused to grant any wage increase, reiterating in effect that its customary generosity could be relied upon to assure the grant of a wage increase when it deemed appropriate (R. 88, 90, 60; B. A. 6, 16, 17, 37–38, 63, 77, 89).

Thereafter, on November 27, in accordance with the War Labor Disputes Act,[6] a strike ballot was conducted at which the employees

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shortly to convert to incentive-rated jobs (B. A. 30, 106–108). Apart from minor exceptions, the employer plans eventually to extend its incentive wage plan to embrace all its employees (R. 74; B. A. 50–51, 66–67, 19, 121, 129).

[6] 57 Stat. 163, 167; 50 U. S. C. App. 1501, 1508.

authorized strike action by a vote of 369 to 120 (R. 87; B. A. 40, 5). "Immediately after the strike vote," the membership of the Union "voted unanimously to place further action" in the "hands" of the negotiating committee which was instructed "to meet again" with the employer "in a final effort to reach a settlement before actually taking strike action" (B. A. 5, 38, 163, 64). Accordingly, the last of the series of meetings was held on December 19, at the Union's behest (R. 88; B. A. 5, 38, 163, 64), at which time the Union presented to the employer "a recapitulation of [its] proposal of November 8 and put down in one place what amounted to about [its] total position on the wage question" (R. 91; B. A. 32, 31, 152–153). At this time, as its first and only counterproposal, the employer offered to insert into the incentive wage plan the ten cents per hour which the incentive-rated employees were presently receiving as a straight-time supplement to their wages.[7] By operation of the incentive wage plan, this offer would amount to an increase of one to one and a half cents per hour for the

[7] At the inception of bargaining between the Union and the employer, incentive-rated employees were receiving, in addition to their incentive computed wages, an extra straight-time ten cents per hour. This supplemental wage, referred to as the "floating dime," comprised two wage increases of five cents per hour each, approved by the War Labor Board, which could not be incorporated into the incentive wage plan because of then existing war regulations governing wage increases. (R. 78–79; B. A. 7–8, 18–19, 34, 56–57.)

incentive-rated employees, about one-third of the working force. (R. 60, 88; B. A. 8–9, 18–19, 34, 39, 64, 72, 98, 99.) Because "it did not begin to meet the increase requested by the Union and did not reflect needed conditions in the mill," the Union rejected this proposal (R. 60–61; B. A. 8).

On January 1, 1946, within twelve days of its refusal to consider during negotiations the grant of any wage raise beyond that contained in its limited offer, the employer announced a concededly "unilaterally determined" increase. The increase thus granted varied from the Union's proposal somewhat because of its inapplicability to certain employees in the unit and the fluctuations in amounts granted but substantially equalled the cost to the employer of the increase requested by the Union and greatly exceeded both in amount and scope of coverage anything which the employer had theretofore offered to the Union. (R. 61, 88–89; B. A. 105, R. 26–27, B. A. 11, 21–22, 33–34, 43–49, 74, 88, 92–95, 98–99, 100, 22, 130–135.)

Professedly actuated by a "rumor, more or less through the grapevine, that local mills were planning to make wage adjustments," which had come to the employer's attention toward the latter part of the week ending December 29, 1945, the employer asserted that it "checked" and "found that wage adjustments were going to be made" at unascertained dates and in unascertained amounts, and it forthwith decided to grant a

wage increase effective December 31, 1945 (R. 88–90; B. A. 92, 74–75, 94–95). Within the space of an hour on the afternoon of January 1, 1946, without prior notice, the employer summoned to its office the rank and file members of the Union's negotiating committee, but omitted to request the presence of the two Union officials who were chiefly responsible for the conduct of the negotiations on behalf of the committee, namely, Kanun, the Union's wage expert, and Douty, the state director of the Union (R. 88; B. A. 88, 43–44, 46, 93, 2, 32). At the same time that the committee's rank and file members were assembled in the office, the employer caused notices of the wage increase to be posted throughout the plant (R. 89; B. A. 49, 44–45, 46–47, 48–49). The introductory clause of the posted notices, read by the employer to the rank and file committee members during their ensuing ten minute audience, stated (R. 89; 44, 47–48, 22, 131–135):

> In accordance with our past policy of being among the first to make wage adjustments when wage changes are being made in this locality, we take pleasure in announcing an increase in rates effective as of the starting of operations Monday morning, December 31st, 1945.

The employer also read to the committee a letter later mailed to Kenneth Douty, the Union's Georgia state director, one of the two Union officials re-

sponsible for steering the committee's work (R. 88–89; B. A. 44, 33, 22, 130). This letter stated:

> In the course of our extended contract negotiations we have repeatedly told you that our mill would be among the first to make wage adjustments in this locality. We have learned that certain of the mills in this locality are about to adjust their wage rates and we are, therefore, making comparable adjustments in our wage rates effective Monday, December 31st, 1945. A copy of the notice which has been posted in the mill today outlining the various rate adjustments is attached hereto.

Upon the completion of the announcement of the unilateral wage increase, the brief session with the members of the committee was ended, and the employer's representative later frankly testified that "the wage adjustment would have been made" notwithstanding "their objections" had they voiced any (R. 89; B. A. 94, 105).

The wage increase covered all production and maintenance employees with the exception of "scrubbers, sweepers and outside labor" (R. 88–89 and note 19; B. A. 100, 22, 131–134).[5] It

[5] Shortly after the announcement of the wage increase, a sweeper who had received no increase complained to one of the members of the negotiating committee; "he wanted to know how come they didn't get a raise, and he said his flour cost him just as much a sack as mine did" (B. A. 47). The scrubbers, sweepers and outside labor are included in the appropriate unit fixed by the Board (R. 89, n. 19).

amounted to an increase of from four to five cents per hour for straight-time, hourly-rated employees and an increase of from five to six cents per hour for incentive-rated employees (R. 88; B. A. 22, 131–135, 98–100).

At the conclusion of the last bargaining conference on December 19, apart from wages, the Union and the employer were in disagreement upon work assignments under the incentive wage plan, insurance provisions, severance pay, vacations, arbitration, union activity upon company time, the preamble to the contract, and union security (R. 88; B. A. 77–78, 40–41). As to union security, the employer's witnesses testified that Kenneth Douty, the Union's chief negotiator, had throughout the latter meetings maintained the position "that we might as well quit talking about a contract because he would never sign any contract, nor ever agree to any contract, irrespective of any other provisions of the contract, unless it included provisions satisfactory to him for the security and protection of the union and the collection of the Union's dues" (R. 90; B. A. 63, 64, 60, 82–83, 91–92, 93–94).

The Board found, however, that the Union did not foreclose agreement by unyielding insistence upon union security (R. 90–91, 60–61). Douty and five other members of the negotiating committee squarely denied that the Union had at any time during negotiations made union security the indis-

pensable precondition to agreement (R. 90–91; B. A. 80–81, 100–105). Douty testified (B. A. 80): "Now we at no time stated that if we didn't get this particular element of the contract that we would have no contract at all. As far as we were concerned, the matter was open for bargaining all along the way on the issues we hadn't arrived at." In its proposed contract submitted to the employer as a basis upon which to initiate negotiations, the Union had included a request for a union shop and check-off of dues and initiation fees (R. 76; B. A. 29, 144). But during the course of negotiations the Union progressively reduced its opening demand in successive stages from a request for a union shop to a provision for maintenance of membership, and at one point indicated a willingness to abandon all compulsory union security and to settle for the deduction of union dues upon the individual authorization of employees (R. 88; B. A. 80, 78–79, 76).[9] The employer, however, refused to grant any form of union security (R. 88; B. A. 72–74, 78–79, 55, 89, 90).[10]

[9] The Union also offered to provide the employer with clerical assistance in the deduction of dues (B. A. 73).

[10] The employer's single counter-proposal along these lines, relating to a form of check-off, was its offer to "give the employees on the first pay day of each month two checks, one for whatever the amount of the Union dues * * *, and the other for the balance of their wages," and to provide a "box" into which the employees might "drop" the dues check

II

THE BOARD'S CONCLUSIONS AND ORDER

The Board found that the employer, "in violation of Section 8 (1) and (5) of the Act, failed to bargain collectively with the Union as the statutory representative of the * * * employees * * * by granting a wage increase to its employees without consulting the Union" (R. 60). It pointed out that by its conduct the employer failed to afford "the Union an opportunity to negotiate with respect to the amount of the increase, the employees to whom the increase would be applicable, the effective date of the increase or any of the factors normally envisaged in the collective bargaining process" (R. 89). The Board also found that "such action taken as soon after the Union was attempting through the bargaining process to reach an agreement with the [employer], among other things, on wages, clearly shows that the [employer] was not acting in good faith during the negotiations, and is manifestly inconsistent

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should they choose to endorse it to the Union (B. A. 73, 90). Further, treating union security as an isolable subject matter of bargaining, the employer refused, in lieu of union security, to consider compensating for its relinquishment by offering more favorable terms upon other aspects of the employment bargain (B. A. 72–73, 86). Thus, the employer's treatment of the Union's security requests paralleled in its lack of compromise its treatment of the Union's wage requests, and as to each, the employer conceded, "We were adamant on both positions" (B. A. 73).

with the principle of collective bargaining" (R. 61).

The Board rejected the employer's "attempted justification for its action on the ground that the Union broke off negotiations on December 19 and that the [employer] was therefore relieved of the obligation to deal with it" (R. 113, 61). The Board stated that even if the Union and the employer "had reached an impasse in their negotiations, this obviously could not affect the Union's status as majority representative," and its consequent continuing "right to bargain with respect to such increase" (R. 91–92), which the employer concededly had "never proposed to the Union as a possible basis of agreement" (R. 113, 61).

Moreover, the factual basis upon which the employer premised the existence of an impasse was found by the Board to be unsupported. The employer contended that the Union's insistence upon union security precluded agreement upon a contract (B. A. 93–94). The Board found that "the preponderance of the credible evidence does not support the [employer's] position that the Union had, in effect, presented an ultimatum that no contract would be consummated which did not afford union security" (R. 90–91), and that "the record fails to support the [employer's] contention that the Union's representatives assumed an unequivocal position at the last meeting which foreclosed further bargaining concerning wages.

or other terms or conditions of employment" (R. 61).

Finally, the Board ruled that neither anticipated wage increases by the employer's competitors in the labor market, nor the Union's taking of a strike vote, absolved the employer of its continuing duty to deal with the Union (R. 89–90, 92).

The Board entered an order requiring the employer to cease and desist from refusing to bargain with the Union "by taking action without prior consultation with said organization, with respect to rates of pay, wages, hours of employment" and "in any other manner interfering with the efforts" of the Union to bargain; upon request, to bargain with the Union; and to post appropriate notices (R. 62–64).

III

THE PROCEEDING IN THE COURT BELOW

On December 8, 1947, the Board filed in the court below a petition to enforce the Board's order (R. 1–5). In its answer to the Board's petition, dated January 10, 1948, the employer alleged (R. 121):

> that since the hearing before the Trial Examiner and the issuance of the order sought to be enforced, [the employer] has bargained with the Union with respect to two general increases in wages and has reached tentative agreements with the

> Union with respect to all proposed provisions of a collective bargaining contract except the provisions, demanded by the Union, with respect to the security of the Union and the deduction of the Union's dues from the wages of the employees; and that on September 19, 1946, [the employer] offered to sign the contract which had been tentatively agreed upon in collective bargaining, and that the Union refused to sign said contract solely because [the employer] would not contract to protect the Union against the anticipated unwillingness of the employees to maintain membership in and pay dues to the Union.

In its brief to the court below (p. 49), the employer further averred that it "has fully complied with said Order, and that said Order has fully served its intended purposes and is now stale."

On May 5, 1948, the court below issued its opinion (R. 124–126), and on the same day entered its judgment (R. 127), in which it denied the petition of the Board for enforcement of its order. The full discussion in the court's opinion states briefly (R. 125–126):

> * * * the only unfair labor practice found by the Board was the granting of a wage increase [by the employer] to its employees without consulting the Union.
>
> It appears, however, to be undisputed in the evidence of Mr. Douty, the representative of the Union in the State, that when

> the wage increase was granted collective bargaining had broken down, the Union had withdrawn from further bargaining in connection with the matter, and a strike vote had already been called. The evidence also seems to be without dispute that the raise in wages was made by the [employer] to meet competition by other mills in that section. Under these circumstances it does not appear to be an unfair labor practice to grant a genera increase in wages to the employees without consulting the Union. On the strength of this view, and in the light of the earnest assertions by the [employer] that it has complied with the Board's previous order and has subsequently bargained with the Union in relation to two general increases in wages, the petition of the Board for enforcement of the order will be denied.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that an impasse in bargaining negotiations between the employer and the statutory representative authorizes the employer to institute unilateral changes in rates of pay, different from and in excess of those proposed by it to the statutory representative during negotiations.

2. In holding that the taking of a strike vote by the statutory representative authorizes the employer to effectuate unilateral changes in rates of pay.

3. In holding that anticipated wage increases by competitors of the employer in the labor market authorizes the employer to effectuate unilateral changes in rates of pay.

4. In failing to accept the Board's findings that the employer had not bargained in good faith.

5. In relying upon compliance by the employer with the order of the Board as a reason for denying enforcement of the order.

6. In relying upon disputable assertions of fact made by the employer, not contained in the record certified to the court by the Board and upon which the Board's order is founded, as a basis for denying enforcement of the Board's order.

7. In failing to enforce the order of the Board.

SUMMARY OF ARGUMENT

I

The duty to bargain collectively defined by Section 8 (1) and (5) of the National Labor Relations Act precludes the employer from unilaterally instituting changes in employment terms without affording the statutory representative a prior opportunity to bargain upon the matters. The Board found that the employer, in violation of this duty, unilaterally granted an increase in wages of four to six cents an hour to most of its employees, an amount substantially equivalent in cost to the employer to the increase requested by the Union and denied by the employer twelve days earlier,

notwithstanding the fact that during negotiations the employer limited its offer to an increase ranging from one to one and a half cents per hour for one-third of the working force, a raise markedly less in amount and coverage than that unilaterally made. Thereby the employer contravened the principle proscribing "Employer action to bring about changes in wage scales without consultation and negotiation with the certified representative of its employees." *May Department Stores Co. v. National Labor Relations Board,* 326 U. S. 376, 384.

After an employer and the exclusive bargaining representative have in good faith bargained to an impasse upon wages or other terms of employment, the employer may unilaterally institute those changes which the statutory representative after notification and consultation found unacceptable. Conversely, however, an impasse in negotiations does not condone the institution of unilateral changes different from or in excess of those which through submission to the collective bargaining process have been tested and proven by genuine bargaining to be an inadequate basis for mutual accord. A genuine impasse reflects the futility and condones the discontinuance of further bargaining so long as the circumstances impelling the deadlock remain unchanged, but when the circumstances which induced the impasse have materially changed, the basis for the

impasse ceases to exist and unilateral action in reliance upon it is no longer justified. Where, as here, after an impasse, an employer by his action changes the status of the negotiations, it becomes the employer's affirmative duty to submit any new wage offer it desires to make to the statutory representative for negotiation.

The Board rejected as factually unsupported the employer's contention that its unilateral action upon wages was justified because of the Union's purported unequivocal position that it would not consent to any agreement, whatever its terms, which did not contain a provision for union security, a matter to which the employer would not accede. Assuming the employer's factual premise, its legal conclusion does not follow. Although the optimum end of collective bargaining is a written agreement covering all aspects of the employment relation, the collective bargaining obligation embraces the duty to bargain "in respect to rates of pay, wages, hours of employment, or other conditions of employment" (Section 9 (a) of the Act), and the inability to agree upon one of these severable items does not abrogate the duty to bargain with respect to other of the items.

The Union's taking of a strike vote does not condone unilateral employer action. Actual recourse to strike action does not relieve the employer of its continuing duty to deal with the

statutory representative, much less an unmaterialized plan to strike. On the contrary, the period preceding a strike is one during which intensified efforts to explore the potentialities for accord through collective bargaining must be exhausted in order to accomplish the Act's purpose to avoid or mitigate needless industrial strife.

Nor is the employer's unilateral action upon wages justified by the purported need to meet the wage increases of competing mills. There is no reason to believe that consultation with the Union upon the wage raise would have caused undue delay; if it did, the interest of the employer and the employees could have been protected by a joint statement of the employer and the Union that any increase ultimately adopted would be granted retroactively.

The Board found, as an alternative ground for decision, that the employer had not been bargaining in good faith during the negotiations. It "seems too plain for anything but statement" that an employer may not stultify the collective bargaining process by its failure to negotiate in good faith, and then "profit from a stubborn refusal to abide by the law" (*Franks Brothers Company* v. *National Labor Relations Board*, 321 U. S. 702, 705) by instituting unilateral changes in employment relations in reliance upon a resultant impasse.

II

Compliance with an order of the Board is not a ground for denying its enforcement. An "order of the character made by the Board, lawful when made, does not become moot because it is obeyed or because changing circumstances indicate that the need for it may be less than when made." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271. Furthermore, the introduction of compliance questions as litigable issues in enforcement proceedings would result in an endless cycle of litigation and impair the workability of the Act. Congress explicitly sought to avoid a requirement that the Board "show in every case that its order is being disobeyed before the court will even proceed to consider the matter on its merits, or render a decree enforcing the Board's order." H. Rep. No. 1371, 74th Cong., 1st Sess., p. 5.

III

Assuming compliance with the Board's order to be generally material to its enforcement, the danger of accepting the employer's unilateral assertions as to its compliance, without any supporting evidence, is too plain to be belabored. Moreover, the court below by basing its decision on matters outside the record failed to follow the holding of this Court that "The statute expressly deprives the reviewing court of power to consider

facts thus brought to its attention. The case must be heard on the record as certified by the Board. The appropriate procedure to add facts to the record as certified is prescribed in § 10 (e) of the Act." *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 249–250. Failure to remand to the Board to ascertain the facts effectively defeats the statutory objective of reposing the fact-finding function in the Board and of according finality to its conclusions within the scope of permissible review. Furthermore, failure to remand, assuming the general materiality of compliance, substitutes the reviewing court's discretion for that of the Board in determining to what extent compliance without more is a sufficiently extenuating factor in the special circumstances of a particular case to obviate the need for an enforcement decree.

ARGUMENT

I

THE BOARD PROPERLY FOUND THAT THE EMPLOYER, IN VIOLATION OF SECTION 8 (1) AND (5) OF THE ACT, FAILED TO BARGAIN COLLECTIVELY WITH THE STATUTORY REPRESENTATIVE BY GRANTING A UNILATERALLY DETERMINED WAGE INCREASE TO ITS EMPLOYEES

Section 7 of the National Labor Relations Act guarantees to employees "the right to self-organization, * * * to bargain collectively through representatives of their own choosing * * *."

Section 9 (a) provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *." Implementing Section 9 (a), Section 8 (5) of the Act requires employers to bargain collectively with the representative of their employees. Section 8 (1) of the Act, in generic terms, forbids interference by employers with the rights guaranteed to employees in Section 7.[11]

[11] In the respects stated, the Act is unchanged by the amendments to it. See the comparison of the original Act with the amended Act set forth in 2 Legislative History of the Labor Management Relations Act, 1947 (Gov't. Print. Off., 1948), pp. 1661-1662, 1666, 1667, 1669. Further emphasizing the concept of collective bargaining as basic to the national labor policy, Section 201 (a) of Title II, Labor Management Relations Act, in establishing conciliation procedures for the settlement of labor disputes, states it to be "the policy of the United States that sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining * * *." See also, 93 Cong. Record 3834, 4194, 4361, 4446, 4480, 4675, 7536-7537; H. Rep. No. 245, 80th Cong., 1st Sess., 34, 22, 23. To afford mutuality of bargaining obligation, Section 8 (b) (3) of the Act, as amended, imposes upon labor organizations the reciprocal duty of bargaining collectively with employers. *Matter of National Maritime Union,*

The duty thus required of employers to bargain collectively with the statutory representative removes complete employer dominion over the employment relationship by assuring effective employee participation in making, changing, and

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78 N. L. R. B., No. 137, 22 L. R. R. M. 1289, 1296–1297. Section 8 (d) of the Act, as amended, apart from the proviso, defines the duty "to bargain collectively" as the "performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession * * *." This provision represents in essence legislative confirmation of the standard of good faith bargaining as administratively evolved and judicially approved prior to the Act's amendment. *Matter of National Maritime Union*, 78 N. L. R. B., No. 137, 22 L. R. R. M. 1289, 1296; Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 274, 282 (1948); Weyand, *The Scope of Collective Bargaining Under the Taft-Hartley Act*, Proceedings of New York University First Annual Conference on Labor, 1948, 257, 258; Note, 61 Harv. L. Rev. 1224, 1225, n. 5 (1948). For representative earlier cases embodying this standard, see *Matter of Harriman Hosiery Mills*, 1 N. L. R. B. 68; *Matter of Houde Engineering Co.*, 1 N. L. R. B. (old) 35, 36; *Matter of St. Joseph Stock Yards Co.*, 2 N. L. R. B. 39; *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. 2d 91, 94 (C. C. A. 5); *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 523–526; *National Labor Relations Board* v. *Pilling & Son Co.*, 119 F. 2d 32, 37 (C. C. A. 3); *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. 2d 452, 459–460 (C. C. A. 7), certiorari denied, 317 U. S. 650.

carrying out the governing terms of employment.[12] By authorizing an exclusive bargaining representative to act on their behalf, the employees through their statutory representative during its incumbency acquire a continuing right to share at every stage with their employer in arriving at the decisions affecting their wages, hours, and working conditions.[13]

To achieve its end of affording to employees the benefits of employment standards "which reflect the strength and bargaining power and serve the welfare of the group,"[14] the collective bargaining obligation not only precludes plural negotiation,[15] but also bars the employer from unilaterally instituting changes in conditions of employment without extending to the statutory representative a prior opportunity to bargain upon the matters. In *May Department Stores Co.*

[12] See *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. 2d 632, 638 (C. C. A. 4); Weyand, *Majority Rule in Collective Bargaining*, 45 Col. L. Rev. 556, 561–564 (1945); Cox, *Some Aspects Of The Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 274, 275–277 (1948); Cushman, *The Duration of Certifications By The National Labor Relations Board and The Doctrine Of Administrative Stability*, 45 Mich. L. Rev. 1, 21–22 (1946).

[13] See *National Labor Relations Board* v. *Newark Morning Ledger Company*, 120 F. 2d 262, 267 (C. C. A. 3), certiorari denied, 314 U. S. 693.

[14] *J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332, 338.

[15] *Medo Photo Supply Corporation* v. *National Labor Relations Board*, 321 U. S. 678, 683–685.

v. *National Labor Relations Board*, 326 U. S. 376, this Court held that an employer committed an unfair labor practice when it unilaterally, without consulting the bargaining agent, requested permission from the National War Labor Board to increase wages. There this Court stated (326 U. S. at 384–385):

> Employer action to bring about changes in wage scales without consultation and negotiation with the certified representative of its employees cannot, we think, logically or realistically, be distinguished from bargaining with individuals or minorities. * * *
>
> * * * Such unilateral action minimizes the influence of organized bargaining. It interferes with the right of self-organization by emphasizing to the employees that there is no necessity for a collective bargaining agent.

In disregard of this principle, the decision of the court below permits the employer unilaterally to grant an increase of four to six cents an hour to most of its employees, an amount substantially equivalent in cost to the employer to the increase requested by the Union and denied by the employer twelve days earlier, notwithstanding the fact that during negotiations the employer limited its offer of an increase to one and one half cents per hour for one third of the working force, a raise markedly less in amount and coverage from that unilaterally made. The crux of the decision

below, therefore, is to sanction a unilateral wage increase in excess of the wage offer submitted by the employer to the Union during negotiations.

Not only did the employer deny the Union the opportunity for bilateral settlement of the wage question on an over-all basis which the Union's earlier position showed would be generally satisfactory to it, the employer also prevented the Union from bargaining upon the distribution of the gross increase among the employees. Specifically, the Union was foreclosed from bargaining for a share of the increase on behalf of the unskilled scrubbers, sweepers, and outside labor, who were given no raise, and in contrast to the Union's request that the increase be an equal five cents per hour for all employees, the employer gave a staggered increase ranging from four to six cents per hour depending upon the job classification (*supra,* pp. 11–12 and n. 8).

Because the wage increase unilaterally made had never been proferred by the employer to the Union for acceptance, rejection, or modification through the collective bargaining process, it stands as an alteration of employment conditions effectuated without antecedent bargaining in relation to it. In consequence, the employer's conduct contravenes the principle expressed by this Court in the *May Department Stores* case proscribing "Employer action to bring about changes in wage scales without consultation and nego-

tiation with the certified representative of its employees." [16]

The court below relies for its contrary conclusion upon the ground that "when the wage increase was granted collective bargaining had broken down, the Union had withdrawn from further bargaining in connection with the matter, and a strike vote had already been called" (R. 125). The error of the court lies in its misconception of the circumstances countenancing unilateral conduct. After an employer and the exclusive bargaining representative have bargained to an impasse in good faith upon wages or other terms of employment, the employer may unilaterally institute those changes which the statutory representative after notification and consultation found unacceptable.[17] The collective

[16] For a collection of the other cases and economic authorities for the proposition that a unilateral wage increase made without prior bargaining with the representative of the employees is inconsistent with collective bargaining, see the Brief for the National Labor Relations Board in the *May Department Stores* case, No. 39, October Term, 1945, pp. 20–35.

[17] *Matter of W. W. Cross and Company*, 77 N. L. R. B., No. 188, 22 L. R. R. M. 1131 (where the union effectively demonstrates to the employer that there is no possibility of reaching an agreement on wages through the normal process of collective bargaining in the event that the employer is unwilling to grant the union's wage demands in full, the employer may unilaterally grant the lesser increase to which it is willing to accede); *Matter of Exposition Cotton Mills Company*, 76 N. L. R. B., No. 183, 21 L. R. R. M. 1319 (announcement by employer of an eight cent increase after its

bargaining obligation does not require congealment of the employment structure if the employer and the exclusive bargaining representative cannot after good faith negotiation strike a bargain.[18] Conversely, it necessarily excludes, if it is to retain its force, the institution of unilateral changes different from or in excess of those which through submission to the collective bargaining process have been tested and proven by genuine negotiation to be an inadequate basis for mutual accord.

In the circumstances of this case, the employer's grant of the same wage increase, one and one-half cents to one-third of the working force, offered to and found unacceptable by the Union after negotiation, would have constituted permissible unilateral conduct. But where, as here, the wage increase granted was in excess of that offered to the Union and omitted from its coverage employees on whose behalf the Union was attempting to bargain, the impasse in negotiations did not condone unilateral action beyond that upon which negotiations had deadlocked. As to such a new proposal, the situation is the same as if there had been no bargaining. An impasse cannot be presumed to continue as a barrier to

rejection by the union); *Matter of Southern Prison Company*, 46 N. L. R. B. 1268, 1269 (grant of individual wage increases after the union refused to bargain as to individual increases and insisted upon a general increase).

[18] Cf. *J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332, 337.

agreement after the conditions which induced it may have been dissipated by the employer's own determination to make a significant change in his position. To be more explicit, if the employer had acceded to the Union's demand for a five cent wage increase, instead of offering much less, the Union might have abandoned its demand for union security.[19] A genuine impasse reflects the

[19] Illustrative is the following extract from the cross-examination by Board counsel of Frank Ethridge, the employer's personnel manager (B. A. 88–90):

"Q. Now, you were in on these negotiations from the first, weren't you?—A. Yes, sir.

* * * * * * *

"Q. * * * you don't know what would have happened if the Company had met the Union's wage proposal, do you, or union security?—A. No, sir. Neither do I know what would have happened if the Union had withdrawn their union-security clause.

"Q. So the only thing that you can testify to is that under the proposals and counter proposals, the Union did not withdraw its demand for union security; is that right?—A. That's right, sir.

* * * * * * *

"Q. And the Union did not withdraw its proposal for higher wages: and the Company did not accept it.—A. That's right, sir.

* * * * * * *

"Q. And several other aspects. And of course you or I or no one else knows what might have been reached in the form of an agreement if somebody had given on some of the points in controversy that they didn't give on, do we?—A. Somebody would have had to have given. We were in a deadlock there.

* * * * * * *

"Q. And if the Company had given on one, you don't know whether the Union might or might not have given on one;

futility and condones the discontinuance of further bargaining so long as the circumstances impelling the deadlock remain unchanged,[20] but when the circumstances which induced the impasse have materially changed, the basis for the impasse ceases to exist and suspension of negotiations and unilateral action in reliance upon it is no longer justified.[21] Accordingly, where, as here, an employer by his action changes the status of the negotiations, it becomes the employer's affirmative duty to reinstitute bargaining and "to submit any wage offer that it desired to make to the certified bargaining representative for negotiation; absent such submission, an impasse with respect thereto could not have been reached."

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or, if the Union had given on one, you can't categorically say you might or might not have given on one.

* * * * * * *

"Q. You couldn't say whether you would or would not.—A. No; I couldn't say that.

* * * * * * *

"Q. You do know they didn't reach an agreement. And like you and I trying to trade for this watch, if we don't agree today, we don't know what we might do tomorrow, do we? If you make a different offer or something of that nature, we might trade tomorrow, mightn't we?—A. That is true. * * *

* * * * * * *

"Q. And you can only judge a situation on what actually occurred, can't you, at that time?—A. Yes, sir."

[20] Cf. *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342–343.

[21] *Matter of Boeing Airplane Co.*, 80 N. L. R. B., No. 88, 23 L. R. R. M. 1107, 1110–1111.

Matter of Craddock-Terry Shoe Corporation, 73 N. L. R. B. 1339, 1342.[22]

In failing to limit the employer's right to act unilaterally after a bargaining impasse to a matter on which the parties had deadlocked, the court below failed to perceive the transitory nature of an impasse and its lack of relation to

[22] The rule in *National Labor Relations Board* v. *Columbian Enameling and Stamping Co., Inc.*, 306 U. S. 292, 297, which the employer invokes, that the Act does not compel the employer "to seek out his employees or request their participation in negotiations for purposes of collective bargaining," has no proper application to a situation where, as here, after negotiations properly instituted by the union have been deadlocked, the employer later determines to change his bargaining position. The inception of a bargaining relationship contemplates a continuing course of dealing in which the initiative devolves upon the union or the employer in accordance with the realistic, not formal, demands of the bargaining situation. As with the bargaining situation in *Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. 2d 432, 436 (C. C. A. 7), so here, the employer "was bound to make the next move." It is aptly stated in Chamberlain, *The Nature and Scope of Collective Bargaining*, Quarterly Journal of Economics, Vol. 58, No. 3 (May 1944), 359, 377–378: "Since the element of mutuality requires that each party negotiate with the other before taking any action in any field of joint concern, it follows that direction of the collective bargaining process to particular issues does not rest solely with the union. Rather, the party wishing to alter the terms of relationship is the one obliged to notify the other of its wishes and to propose negotiations. The burden of initiating discussions on particular issues may thus rest with the employer, and this not only in those instances when he is seeking to curtail the union's prerogatives or its members' perquisites, but also when he proposes to extend them. Once joint concern is established, any unilateral action is barred."

the continuance of the Union's status as the exclusive bargaining representative. In *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. 2d 134 (C. C. A. 4), certiorari denied, 302 U. S. 731, the employer refused to reinstitute negotiations with the union upon its request because efforts to bargain about a month earlier "had resulted in failure and an impasse in the negotiations had been reached" (91 F. 2d, at 139). In the interval, however, "the status of the controversy had undergone considerable change * * *" (*ibid.*). In sustaining the Board's view that the employer had refused to bargain collectively, the Fourth Circuit held in substance that "the statute enjoining collective bargaining would largely fail of its purpose" were "the failure of negotiations to result in agreement in June" deemed to so clearly preclude "the possibility of agreement in July under the changed circumstances then existing" as to warrant discontinuance of further negotiations (91 F. 2d, at 140). In like fashion in the instant case, "the statute enjoining collective bargaining would largely fail of its purpose" if unilateral employer action may be predicated upon an impasse the basis of which may be dispelled by the very circumstance that the employer is presently willing to grant an advantage which it earlier withheld, and which was material in the bargaining situation inducing the deadlock.

Unilateral employer action, like the refusal to reinstitute bargaining, cannot be justified by an impasse which is spent by changed circumstances. The bargaining relationship between the employer and the statutory representative subsists notwithstanding an impasse; it can be dissolved only by the voluntary action of a majority of the employees in changing or abandoning union representation;[23] and so long as it subsists, employer dominion over the employment relationship is displaced by employee participation, through the statutory representative in, fixing the terms upon which labor is to be performed.

The employer urged before the Board and in the court below, that its unilateral action upon wages was justified because of the Union's purported unequivocal position that it would not consent to any agreement, whatever its terms, which did not contain a provision for union security, a matter to which the employer would not accede. Upon this phase of the case there was a square conflict in testimony (*supra*, pp. 12–13) which the Board resolved against the employer (R. 90, 61), holding that the Union had not in fact foreclosed agreement by unbending insistence upon union security. This finding is clearly supported by substantial evidence (R. 90–91; B. A. 80–81, 100–

[23] See *Franks Bros. Company* v. *National Labor Relations Board*, 321 U. S. 702, 705–706.

105) and was not disturbed by the court below.[24] The employer's legal contention in this respect therefore presents no occasion for its consideration by this Court because it is without factual basis.

However, assuming the employer's factual premise, the legal conclusion which it posits does not follow. The Union's adoption of a position after genuine bargaining that some form of union security is indispensable to any agreement does not justify the employer's unilateral alteration of other terms of the employment relationship. Although the desired aim to which the Act is directed is "to compel employers to bargain collectively with their employes to the end that employment contracts binding on both parties should be made,"[25] the collective bargain obligation embraces

[24] The resolution of conflicting testimony is almost exclusively within the Board's province as trier of the fact, and normally presents no occasion for rejection by a reviewing tribunal. *National Labor Relations Board* v. *Waterman Steamship Corporation*, 309 U. S. 206, 226; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 597; *West Virginia Glass Specialty Co.* v. *National Labor Relations Board*, 134 F. 2d 551, 552 (C. C. A. 4), certiorari denied, 320 U. S. 738; *National Labor Relations Board* v. *Robbins Tire & Rubber Co.*, 161 F. 2d 798, 800 (C. C. A. 5); *National Labor Relations Board* v. *Bird Machine Co.*, 161 F. 2d 589, 590–591 (C. C. A. 1); *National Labor Relations Board* v. *Auburn Foundry, Inc.*, 119 F. 2d 331, 333 (C. C. A. 7); cf. *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 394–395.

[25] *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342. See also, *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 236.

the duty to bargain "in respect to rates of pay, wages, hours of employment, or other conditions of employment" (Section 9 (a) of the Act), and the inability to agree upon one of these severable items which prevents consummation of a complete contract does not abrogate the duty to bargain with respect to other of the items.[26] It would seriously impair the collective bargaining obligation to conclude that an impasse reached upon one matter justifies unilateral action upon another matter; stating it more concretely, the inability of an employer and a union to agree upon wages does not sanction the employer's unilateral change of hours.

When the optimum end of collective bargaining, a written agreement covering all aspects of

[26] *Matter of Pool Manufacturing Company*, 70 N. L. R. B. 540, 549 (The Act requires an employer to bargain on all matters involving the employees' terms and conditions of employment, and the inability of the parties to agree on the subject of wages and the closed shop does not constitute a defense to a refusal to bargain with respect to other matters which the union requested be considered). See, Note, 61 Harv. L. Rev. 1224, 1231–1232. Compare Section 8 (d) of the Act, as amended (*supra*, pp. 25–26, n. 11), which requires the employer and the labor organization to "confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, * * *." By the juxtaposition of "wages, hours, and other terms and conditions of employment" with "negotiation of an agreement," it is evident that failure in good faith to reach an agreement does not affect the continuing duty to bargain with respect to the severable, individual, substantive subjects of collective bargaining.

the employment relationship, is unattainable because genuine disagreement prevents a complete contract, collective bargaining contemplates the continuance of dealing upon individual subjects as to which the potentiality for accord has not been exhausted. Even in the absence of a complete written contract, the parties may come to an understanding expressed orally or in a less formal writing with respect to some subjects. The elimination of some items of discord by mutual bargaining to that extent achieves the basic purpose of the statute, the peaceful settlement of industrial disputes.

The court below condones the employer's unilateral action in reliance upon the fact that "a strike vote had already been called" (R. 125). The employer concedes that the court below erred upon this branch of the case. Employer's Brief In Opposition To Certiorari, pp. 29–30, 17. The necessary premise of the court below was that the bargaining agent's plan to resort to strike action to enforce its requests lessens its authority as the statutory representative and diminishes the employer's consequent duty to abstain from unilateral conduct. The Act exacts no such toll upon the right to strike. *Actual* recourse to strike action does not sever the employment relationship between the employer and the striking employees,[27] and in consequence does not relieve the

[27] *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344–345.

employer of its continuing duty to negotiate with their statutory representative and to respect its status.[28] *A fortiori,* in the instant case, the statutory representative's unmaterialized plan to strike does not affect its status. On the contrary, the period preceding a strike is one during which intensified efforts to explore the potentialities for accord through collective bargaining must be exhausted in order to accomplish the purpose of the Act to avoid or mitigate needless industrial strife.[29]

The court below parenthetically justifies the employer's unilateral action upon the ground "that the raise in wages was made by the [employer] to meet competition by other mills in that section" (R. 125). Apart from the dispositive fact that necessitous circumstances did not impel the employer's unilateral conduct,[30] the

[28] *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. 2d 874, 885–886 (C. C. A. 1), certiorari denied, 313 U. S. 595; *Jeffrey-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. 2d 134, 140 (C. C. A. 4), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Columbian Enameling & Stamping Co., Inc.*, 306 U. S. 292.

[29] Compare Section 204 (a) (1) of Title II, Labor Management Relations Act, 1947: "In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions * * *."

[30] The employer did not contend that the information as to upward wage adjustments in competing mills constrained it

decision below ascribes to the collective bargaining process an inflexibility disabling it from accommodating to the need for speed in making wage adjustments when the situation requires expedited action. There is no reason to believe that consultation with the Union as to the granting of this increase would have caused undue delay; if it did, the interest of the employer and the employees could have been protected by a joint statement of the employer and the Union that any increase ultimately adopted would be granted retroactively. In the absence of preliminary resort to the collective bargaining process to test the feasibility of immediate agreement between the statutory representative and the em-

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to effectuate a *unilateral* wage increase. Its position was rather that the Union's insistence upon union security purportedly made resort to collective bargaining futile, and in consequence condoned recourse to unilateral action (*supra*, p. 15). When the employer decided to take unilateral action it did not know either the amount of the increase to be made by competing mills or the time it was to be put in effect (*supra*, pp. 9-10). Therefore, the employer did not know what it had to meet or when it had to meet it to prevent the employees from leaving their jobs, an exodus which the employer had no reason to expect, upon the basis of the information it had, would occur with any immediacy. Moreover, the employer made no showing, and it can hardly be assumed as indisputable, that the local labor market was so fluid, and the employees so mobile, that any significant number of the employer's 630 production and maintenance workers could be absorbed at once by other employers. Finally, it cannot be presumed that the employees would become restive during the period that they know their statutory representative is negotiating a wage increase for them.

ployer, it cannot be assumed that conceivable harm to the employer from the brief delay needed to notify and consult the Union overbalances the harm to the employees arising from disregard of their bargaining representatives.[31]

In addition to the Board's position that an impasse does not justify unilateral employer action in a form in excess of or different from the proposals offered by the employer during the negotiations culminating in the deadlock, the Board found, as an alternative ground for decision, that the employer had not been bargaining in good faith during the negotiations. The Board inferred lack of good faith from the speedy grant of the unilateral wage increase in an amount financially as onerous to the employer as the amount

[31] Even if necessitous circumstances had impelled the employer here, the several courts of appeals have in instances of claimed employer hardship uniformly applied the rule that the Act "prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute." *National Labor Relations Board* v. *Star Publishing Co.*, 97 F. 2d 465, 470 (C. C. A. 9); *National Labor Relations Board* v. *Globe Brewing Company*, 144 F. 2d 847 (C. C. A. 8); *McQuay-Norris Mfg. Co.* v. *National Labor Relations Board*, 116 F. 2d 748, 752 (C. C. A. 7); *National Labor Relations Board* v. *Hudson Motor Car Company*, 128 F. 2d 528, 532–533 (C. C. A. 6); *National Labor Relations Board* v. *John Engelhorn & Sons*, 134 F. 2d 553, 557 (C. C. A. 3); *National Labor Relations Board* v. *National Broadcasting Co., Inc.*, 150 F. 2d 895, 900 (C. C. A. 2).

requested by the Union and denied by the employer only twelve days earlier. Without intimating any rejection of this finding as based upon an insupportable inference, the court below failed to give effect to it.

The only possible factor militating against the propriety of the inference is the employer's interim information of upward wage adjustments to be made by competing mills ostensibly affording it a reason to change its wage position. However, the precipitate haste with which the employer seized upon this reason to effectuate a *unilateral* change when it knew neither the amount nor the time of the competing increase (*supra*, pp. 9–10) confirms rather than dispels the inference. The inference to be drawn from the facts is, of course, within the Board's province as trier of the fact. *National Labor Relations Board* v. *Nevada Consolidated Copper Corporation*, 316 U. S. 105; *Cardillo* v. *Liberty Mutual Co.*, 330 U. S. 469, 477–478; *Medo Photo Supply Corporation* v. *National Labor Relations Board*, 321 U. S. 678, 681, n. 1.

It "seems too plain for anything but statement" that an employer may not stultify the collective bargaining process by its failure to negotiate in good faith, and then "profit from a stubborn refusal to abide by the law" (*Franks Brothers Company* v. *National Labor Relations Board*, 321 U. S. 702, 705) by instituting unilateral changes

in employment relations in reliance upon a resultant impasse. *National Labor Relations Board* v. *Hoppes Mfg. Co.*, decided November 29, 1948, slip opinion, pp. 3–4 (C. C. A. 6).

II

ENFORCEMENT OF AN ORDER OF THE BOARD MAY NOT PROPERLY BE DENIED BECAUSE IT HAS BEEN OBEYED

In denying enforcement of the Board's order the court below, without particularization, relied upon "the earnest assertions by the [employer] that it has complied with the Board's previous order and has subsequently bargained with the Union in relation to the two general increases in wages" (R. 126). The employer concedes that the court below erred upon this branch of the case. Employer's Brief In Opposition To Certiorari, pp. 4, 29–30, 23–24, 32.

In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271, this Court explicitly held that compliance with the Board's order is without relevance to the propriety of its enforcement. There this Court stated that "an order of the character made by the Board, lawful when made, does not become moot because it is obeyed or because changing circumstances indicate that the need for it may be less than when made." Notwithstanding discon-

tinuance of the proscribed practice through voluntary compliance, the Board is "entitled to bar its resumption" by invoking compulsive judicial power in aid of its order. Compare *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 230; *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260.

Compliance is irrelevant to the enforcement of a continuing order not only because voluntary obedience does not preclude the danger of resumption of the proscribed practice, but also because the introduction of compliance as a litigable issue in enforcement proceedings would drastically impair the workability of the Act. If each of the elements of compliance was litigated, the time necessarily consumed in their disposition would in the interim produce further changes in the situation affecting compliance to be in turn litigated in an endless cycle which would make "a merry-go-around of the Act." [32]

To permit violators of the Act to defeat enforcement of Board orders by showing compliance would bring about the very evil which Congress sought to avoid in empowering the Board under Section 10 (e) of the Act to petition for enforce-

[32] *National Labor Relations Board* v. *Condenser Corporation*, 128 F. 2d 67, 81 (C. C. A. 3). Compare the opinion of Mr. Justice Rutledge speaking for the Court of Appeals for the District of Columbia in *International Association of Machinists* v. *National Labor Relations Board*, 110 F. 2d 29, 23 (App. D. C.), affirmed, 311 U. S. 72, 82.

ment of its order. In conference, to obviate the materiality of compliance, the language of Section 10 (e) was deliberately changed from that contained in the original Federal Trade Commission Act (38 Stat. 717, 720) to its present form, and the change was explained as follows (H. Rep. No. 1371, 74th Cong., 1st Sess., p. 5):

> Section 10 (e) of the Senate bill provided that "if such person fails or neglects to obey such order of the Board while the same is in effect, the Board may" petition any circuit court of appeals, etc. House amendment numbered 15 strikes out the quoted phrase and substitutes "The Board shall have power to" petition any circuit court of appeals, etc. The conference agreement accepts this amendment. The purpose is to provide for more expeditious procedure. Delay in enforcement procedure due to technicalities would be especially harmful under this act. It is the purpose of this amendment to authorize the Board to apply to the courts for an enforcement order, without encountering the delay resulting from certain court decisions (a small minority) under the Federal Trade Commission Act, requiring the Commission to show in every case that its order is being disobeyed before the court will even proceed to consider the matter on its merits, or render a decree enforcing the Board's order. As the majority of courts have declared under the Federal Trade Commis-

> sion Act, neither the administrative body nor the courts are required to assume in the ordinary case that the unlawful practice in question, even though presently terminated, will not be resumed in the future. If such practice is resumed there will be immediately available to the Board an existing court decree to serve as a basis for contempt proceedings.

Consequent upon these considerations, the courts of appeals have uniformly held that discontinuance of the proscribed conduct through voluntary compliance with the Board's order is immaterial to its enforcement and have refused to litigate questions of compliance as a condition precedent to entry of an enforcement decree.[33]

[33] Illustrative of the decisions in the Courts of Appeals are the following cases:

First Circuit: *National Labor Relations Board* v. *Draper Corporation*, 159 F. 2d 294, 297; *National Labor Relations Board* v. *L. H. Hamel Leather Co.*, 135 F. 2d 71, 72–73; *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. 2d 249, 252.

Second Circuit: *National Labor Relations Board* v. *Acme Air Appliance Co.*, 117 F. 2d 417, 421.

Third Circuit: *National Labor Relations Board* v. *McLain Fire Brick Co.*, 128 F. 2d 393, 394; *National Labor Relations Board* v. *Condenser Corporation*, 128 F. 2d 67, 81.

Sixth Circuit: *National Labor Relations Board* v. *Toledo Desk & Fixture Company*, 158 F. 2d 426; *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. 2d 618, 619; *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. 2d 295, 300.

Seventh Circuit: *National Labor Relations Board* v. *Bachelder*, 125 F. 2d 387, 388; *National Labor Relations Board* v.

Any other conclusion entails seriously detrimental consequences to the Act's enforceability.

III

A REVIEWING COURT MAY NOT RELY UPON DISPUTABLE ASSERTIONS OF FACT AS TO COMPLIANCE MADE BY THE EMPLOYER, NOT CONTAINED IN THE RECORD CERTIFIED TO THE COURT BY THE BOARD AND UPON WHICH THE BOARD'S ORDER IS FOUNDED, AS A BASIS FOR DENYING ENFORCEMENT OF THE BOARD'S ORDER

Assuming compliance with the Board's order to be generally material to its enforcement, the court below erred in accepting as fact the employer's "earnest assertions" with respect to its compliance when no evidence respecting compliance had been offered before either the Board or the court. The employer seemingly concedes that the court below erred upon this branch of

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Gerling Furniture Manufacturing Co., Inc., 103 F. 2d 663.

Eighth Circuit: *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 239, certiorari denied, 334 U. S. 845; *National Labor Relations Board* v. *Swift & Company*, 129 F. 2d 222, 224.

Ninth Circuit: *National Labor Relations Board* v. *Lettie Lee, Inc.*, 140 F. 2d 243, 250; *National Labor Relations Board* v. *American Potash and Chemical Corp.*, 98 F. 2d 488; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. 2d 197.

District of Columbia: *National Labor Relations Board* v. *National Laundry Co.*, 138 F. 2d 589, 590.

For prior decisions in the court below in accord with these views, see *National Labor Relations Board* v. *Hills Bros. Co.*, 161 F. 2d 179, 180; *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. 2d 497.

the case. Employer's Brief In Opposition To Certiorari, pp. 4, 24, 32.

The employer's averments as to its compliance are contained in its answer to the Board's petition for enforcement and in its brief in the court below (*supra*, pp. 16–17). They are not part of the record certified by the Board to the court below and upon which the Board's order is based. The danger of accepting such unilateral assertions, unsupported by any evidence, is too plain to be belabored.[34]

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[34] The danger to be apprehended is strikingly illustrated by the following extract from the Union's oral argument before the Board (Transcript of oral argument before the Board, pp. 25–26, 29):

"Mrs. KANUN. * * * since this hearing was held in February there have been some additional occurrences which I think are pertinent to any decision which the Board may make.

"Chairman HERZOG. I don't think we can hear them if they are not in the record, Mrs. Kanun.

"Mrs. KANUN. O. K. I will withdraw them.

"There is one point which I feel I should mention because I should have a right to mention it, because Mr. Williams included it in his brief, and that is a substantive wage increase to the March level. I will abide by any decision you make on it, of course.

"Mr. WILLIAMS. I did mention the fact in our brief that we made another wage increase on March 11.

"Chairman HERZOG. I think if Mrs. Kanun wants to allude to that very briefly it is all right but I don't think she better allude to anything else.

"Mrs. KANUN. * * * The second wage increase which Mr. Williams referred to in his brief was a community movement, although he indicates it was put into effect through the process of collective bargaining, was not actually bargaining in good faith because on March 9, 1946, the Union re-

Even if the employer's assertion of compliance had been supported by proof, the court below would still have erred in considering it since no evidence respecting compliance had been included in the record before the Board. This Court in *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 249–250, held that "The statute expressly deprives the reviewing court of power to consider facts thus brought to its attention. The case must be heard on the record as certified by the Board. The appropriate procedure to add facts to the record as certified is prescribed in § 10 (e) of the Act."[35]

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ceived a notice from the Company asking for a meeting on March 12, 1946, to put into effect a wage increase which it wanted to put in effect on March 11, 1946, in addition to which—I don't want to impose upon the tolerance of the Board in dragging in extraneous issues but there were some unfair labor practices in connection with the second wage increase which, if the Board should see fit to change any of the rulings recommended in the intermediate Examiner's report, we would consider a valid basis of filing subsequent cases for unfair labor practices and not bargaining in good faith."

[35] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 331 U. S. 416, 428, is not opposed to, but confirms the authority of this case. In the *Jones & Laughlin* case, this court stated that, in the consideration of circumstances arising after issuance of the Board's order affecting the propriety of its enforcement, "where the matter is one involving complicated or disputed facts or questions of statutory policy, a remand to the Board is ordinarily in order." Because the subsequently arising facts were stipulated and the Board's policy applicable to them was settled, remand in the *Jones & Laughlin* case was unnecessary, since

Section 10 (e) of the Act, as amended, in substantially the same terms as prior to the amendment, provides that:[36]

> If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its members, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Acceptance by the court below of the employer's bare assertions without remand to the Board to ascertain the facts effectively defeats the statutory

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the failure to remand could in no wise undercut administrative authority. Precisely the contrary is true here, inasmuch as both facts and policy are in question.

[36] For the criteria applicable to remand to adduce additional evidence, see, generally, *Southport Petroleum Company* v. *National Labor Relations Board*, 315 U. S. 100.

objective of reposing the fact-finding function in the Board and of according finality to its conclusions within the scope of permissible review.

Apart from the failure to remand to the Board for the ascertainment of the facts as to compliance, the court below was in equal error in failing to remand to secure the Board's administrative judgment of the consequences of compliance in the special circumstances of the particular case. Assuming *arguendo* the general materiality of compliance status as a condition precedent to obtaining an enforcement decree, each case presents individual problems as to the extent to which compliance makes entry of a decree enforcing the Board order necessary. The benefits of expertness which the Act contemplates will be derived from the creation of a specialized agency especially competent in the field of labor-management relations are not confined to the adjudication of unfair labor practices and the fashioning of an appropriate remedy,[37] but extend as well to the determination of questions of compliance in the execution of the remedy.[38] Recognizing that the administrative process is not exhausted with the issuance of the Board's order, a post-decree compliance procedure has been developed whereby subsequent to the enforcement

[37] *Phelps Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, 194.

[38] *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 270.

of a Board order the cause may in appropriate circumstances be remanded to the Board to make inchoate aspects of the decree more definite and to define compliance requirements in the light of changed circumstances.[39] The court below, therefore, in presuming that compliance without more was a sufficiently extenuating factor in the circumstances of this case upon which to predicate denial of enforcement substituted its discretion for that of the Board on a matter within administrative competence.

CONCLUSION

For the reasons stated it is respectfully submitted that the decision below should be reversed

[39] *Wallace Corporation* v. *National Labor Relations Board*, 159 F. 2d 952 (C. C. A. 4); *National Labor Relations Board* v. *New York Merchandise Co.*, 134 F. 2d 949 (C. C. A. 2). See also, *National Labor Relations Board* v. *Draper Corporation*, 159 F. 2d 294, 298 (C. C. A. 1); *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 663 (C. C. A. 2); *National Labor Relations Board* v. *Phoenix Mutual Life Ins. Co.*, 167 F. 2d 983, 989 (C. C. A. 7); certiorari denied, Supreme Court No. 245, October 18, 1948. Although this procedure has thus far been confined to the computation of back pay and the determination of "substantially equivalent" positions in the reinstatement of discriminatorily discharged employees, the principle upon which it is based is of general application. It is appropriate, for example, to the determination whether the relation of a successor employer to its predecessor is such as to justify holding the successor responsible for the rectification of a continuing course of unfair conduct. See *Regal Knitwear Company* v. *National Labor Relations Board*, 324 U. S. 9; *Southport Petroleum Company* v. *National Labor Relations Board*, 315 U. S. 100.

and the cause remanded with directions to enforce the Board's order in full.

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DECEMBER 1948.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce

by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representative of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * * *

[SEC. 10] (c) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such

transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. * * *

The relevant provisions of Section 10 (e) of the National Labor Relations Act, as amended by Section 101 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

* * * * * *

* * If either party shall apply to the court for leave to adduce additional ev-

dence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. * * *

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

197

No. 197.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

CROMPTON-HIGHLAND MILLS, INC.

BRIEF OF
CROMPTON-HIGHLAND MILLS, INC.,
In Opposition to
Petition for a Writ of Certiorari.

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BRIEF OF CROMPTON-HIGHLAND MILLS, INC., In Opposition to Petition for a Writ of Certiorari.

INTRODUCTORY STATEMENT OF THE CASE.

The events here involved occurred between the dates of August 31, 1945, and January 1, 1946.

The hearings before the Trial Examiner of the National Labor Relations Board were held on February 20 and 21, 1946 (R. 70). The Intermediate Report of the Trial Examiner was issued on March 25, 1946 (R. 104), and the

Board, issued its decision and order on August 21, 1946 (R. 64).

The petition for enforcement of the Board's order was filed more than a year later, on December 8, 1947 (R. 1). The judgment of the Circuit Court of Appeals for the Fifth Circuit was entered on May 5, 1948 (R. 127). The petition for a writ of certiorari was filed on August 4, 1948, and served on August 16, 1948, more than ten days after the date of filing. (See Par. 3 of Rule 38.)

The case presented by the petition for certiorari is an imaginary one, only slightly related to the facts which actually occurred.

The opinion of the Circuit Court was inadequate and in some unnecessary respects inappropriate. The petition for certiorari and supporting brief are skillfully misleading.

We shall endeavor to demonstrate that the judgment of the Circuit Court, denying enforcement of the Board's order, was entirely correct and that there is no warrant or occasion for a writ of certiorari.

ONLY QUESTION PRESENTED.

Only one question of substance is presented, and the purported statement of it in Paragraph 1, page 2, of the petition for certiorari is inaccurate and misleading.[1]

[1] Other questions of substance, including (1) an issue of fact as to whether the complained of wage increase was made without consulting the Union; (2) Respondent's contention that the Union, by bargaining for its personal interests and advantages to the exclusion of bargaining for the interests and advantages of the employees, had so abandoned its agency responsibilities that it had forfeited its agency authority; and (3) an issue as to whether the order of the Board, if enforced, should be modified so as to restrict it to the only unfair labor practice found to have been committed, were presented to the Circuit Court of Appeals, but are not regarded as directly pertinent to the present investigation.

The question presented is more accurately stated as follows:

Whether Respondent refused to bargain with the Union by unilaterally increasing its wage rates on January 1, 1946, after collective bargaining negotiations, which commenced on August 31, 1945, and continued with more than usual success until October 17, 1945, had been broken off and terminated by the Union, without fault of Respondent, first on October 18, 1945, again, after resumption, on November 8, 1945, and finally and completely on December 19, 1945; and where no further collective bargaining negotiations were pending, requested or anticipated at the time said wage increase was made, and Respondent had unquestionably demonstrated a willingness to bargain in complete good faith whenever requested to do so, and the wage increase was essential to the maintenance of Respondent's position in a highly competitive labor market.

Or, to the same effect:

Can Respondent be held to have refused to do what it was not requested or under any duty to do?

The purported statement of said question in Paragraph 1, page 2, of the petition for certiorari is inaccurate and misleading, because more than an "impasse in bargaining negotiations" occurred, and because said statement implies, contrary to fact, that the bargaining negotiations broke down on the wage issue.

Actually, the Union, without fault of Respondent, completely terminated the bargaining negotiations, without indicating any intention of ever resuming them (infra pp. 9-11), solely because Respondent would not agree to compel the employees to maintain membership in and pay dues to the Union (infra pp. 11-16). Respondent, notwithstand-

ing the threatened strike, had resumed bargaining, and had demonstrated a willingness to bargain in complete good faith, whenever requested to do so (infra pp. 16-17). Respondent was not under any duty to, and the Union, after its final termination of the bargaining negotiations, did not request any resumption of the negotiations; and no further bargaining negotiations were pending, requested or anticipated when the wage increase was granted (infra pp. 9-11, 17-22).

Other Questions Stated by Petitioner.

As fully appears from the facts and arguments hereinafter stated and set forth, the questions stated in paragraphs 2 and 3, pages 2-3, of the petition for certiorari, while somewhat attuned to certain dicta in the opinion of the Circuit Court, are not at all relevant to the facts of the case or to the actual judgment of the Circuit Court.

The answer to both questions is so obviously "no," that no occasion for a writ of certiorari exists on account of them.

ADDITIONAL STATEMENT OF THE CASE.

Proper evaluation of the issue presented requires a realization that most of the hearings before the Trial Examiner (see Appendix to Board's Brief in the Circuit Court) and most of the Intermediate Report of the Trial Examiner (R. 69-104)[2] were devoted to the Union's contention that Respondent did not bargain in good faith with respect to a controverted incentive wage plan. This was natural because it was generally acknowledged (R. A. 13)

[2] References to the printed record are designated "R." References to evidence printed in Respondent's brief in the Circuit Court are designated "R. A." The appendix to Respondent's brief in the Circuit Court was printed at the end of said brief.

that the installation of the incentive wage plan had precipitated the organization of the Union.

The Trial Examiner purported to find:

(a) That Respondent did not bargain with the Union in good faith with respect to the incentive wage plan; (b) that Respondent interfered with, restrained and coerced its employees in violation of Section 8 (1) of the National Labor Relations Act; and (c) that Respondent refused to bargain with the Union, in violation of Section 8 (5) of said Act, by increasing its wage rates on January 1, 1946, "without consulting the Union."

The Board found:

(a) That Respondent bargained with the Union in complete good faith with respect to the controverted incentive wage plan (R. 61-62),[3] and (b) that Respondent did not interfere with, restrain or coerce its employees in violation of Section 8 (1) of said Act (R. 62 and 110).

The Board predicated its decision and order solely upon its affirmance of the Trial Examiner's finding that Respondent refused to bargain, in violation of Section 8 (5) of said Act, by increasing the wage rates of its employees on January 1, 1946, without consulting the Union (R. 60, 61-62).[3]

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[3] The pertinent portions of the decision of the Board are quoted as follows, to-wit:

(R. 60) "1. The Trial Examiner found that the respondent, in violation of Section 8 (1) and (5) of the Act, failed to bargain collectively with the Union as the statutory representative of the respondent's employes by refusing to furnish the Union with certain detailed information relating to the incentive wage plan and by granting a wage increase to its employees without consulting the Union. Although we agree with the Trial Examiner's conclusion, we, however, rest our determination solely on the latter ground."

(R. 61-62) "With respect to the respondent's refusal to comply with the Union's request for certain information concerning its Point Plan, we, unlike the Trial Examiner, are not persuaded that, on the

It is against this background that the issue presented should be considered. Any unwillingness to bargain in good faith would have certainly been manifested in connection with the bargaining with respect to the incentive wage plan which had precipitated the organization of the Union; and the Board found that Respondent bargained in good faith with respect to the controverted incentive wage plan. The absence of any basis for the customary, almost automatic, 8 (1) charges of interference, is also significant; and against this background, it is most significant that the petition to enforce the Board's order was not filed until sixteen months after the date on which the Order was issued.[4]

RESPONDENT'S EXHIBITS 3, 4 and 2.

We do not ask the Court to pass upon any controverted issues of fact.

However, full appreciation of the fact that Respondent bargained with the Union in complete good faith is essential to a consideration of the issue presented; and the fact that Respondent did bargain with the Union in complete good faith in a sincere effort to agree upon a contract, cannot be appreciated fully without an examination of Respondent's Exhibits 3, 4 and 2 (Exhibit 2 was identified

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facts of this case, the respondent thereby manifested bad faith. In view of the respondent's invitation to the Union to conduct its own engineering studies at the plant, and under all the circumstances of this particular case, including the evidence of substantial counter-proposals on many other issues, we find that this part of the respondent's conduct was not violative of Section 8 (5) of the Act. The effect of such conduct in a different context is not before us for decision here."

See also amendment of Board's order, R. 110.

4 Respondent alleged, and prayed that the Circuit Court provide it appropriate opportunity to prove, that Respondent had, in the meantime, initiated bargaining with respect to two general wage increases, and had agreed with the Union upon a complete contract, minus Union security and check-off, which Respondent had offered to sign and which the Union had refused to sign (R. 119 at 121; pp. 39-58, Respondent's brief in the Circuit Court).

out of order at the request of the Board's attorney, R. A. 5-7).

These exhibits are not included in the printed record, but are on file in the Office of the Clerk of the Supreme Court.

The rules of the Fifth Circuit Court of Appeals require that all oral and documentary evidence relied upon by either party be printed in the appendix to the brief of said party. Because these exhibits, with all the interlineations, deletions and attached riders, would have been extremely expensive to print, and because, in printed form, these exhibits would be much less informative than they are in the form in which they were introduced in evidence and certified to the Circuit Court by the Labor Board, the Circuit Court granted Respondent's request (pp. 4-6 of Respondent's brief in the Circuit Court) that the original exhibits be examined and considered by the Court although not printed in the appendix to Respondent's brief.

By order of Judge Samuel H. Sibley, one of the Judges of the Fifth Circuit Court of Appeals, the Clerk of that Court has certified said exhibits as a part of the documentary evidence which was considered by the Circuit Court, and has forwarded the original exhibits to the Clerk of the Supreme Court.

Respondent respectfully and earnestly asks that Respondent's Exhibits 3, 4 and 2, which, as originally introduced in evidence, are now on file in the office of the Clerk of the Supreme Court, be examined and considered by the Court. If this request be not granted, Respondent begs leave and time to obtain photographic copies of said exhibits for distribution by the Clerk to the several Justices before the petition for certiorari is acted upon. Obtaining photographic copies will involve an expense of several hun-

dred dollars which Respondent would like to avoid, but will incur if necessary.

The referred to exhibits are a graphic account of the bargaining negotiations. **Respondent's Exhibit 3** is a copy of the contract which Respondent proposed to the Union at the first bargaining conference on August 31, 1945. The interlineations, deletions and attached riders show the concessions and alterations which were agreed upon in collective bargaining, and the marginal dates show the course and sequence of the bargaining (R. A. 5-6).

So many changes in Respondent's original proposal were agreed upon in collective bargaining that the bargaining representatives of both parties encountered difficulty in keeping up with them. To facilitate further bargaining, Respondent prepared, and, on October 12, 1945, presented to the Union, a memorandum of the contract provisions which had, up to that time, been agreed upon, and of Respondent's proposals as to the provisions which had not been agreed upon (R. A. 6-7). **Respondent's Exhibit 4** is a copy of this memorandum. The typewritten marginal dates are the same as the marginal dates on Respondent's Exhibit 3, and show the course and dates of the agreements made in collective bargaining prior to October 12, 1945. The interlineations, deletions and attached riders, and the red pencil marginal dates, reflect the course of the bargaining and the agreements reached in bargaining after October 12, 1945 (R. A. 6-7).

Respondent's Exhibit 2 is a copy of an amendment of Respondent's proposals which Respondent verbally proposed to the Union on October 18, 1945, and formally submitted to the Union on November 7, 1945, to meet all objections which the Union had voiced with respect to Respondent's proposals regarding the incentive wage plan (R. A. 7).

We confidently believe that examination of these three exhibits, and the facts hereinafter stated, will convince the Court that Respondent sincerely tried to agree with the Union upon a contract, and that Respondent bargained with the Union, in the utmost good faith, as long as, and longer than, the Union was willing to bargain with Respondent, and until the Union broke off and finally terminated the bargaining negotiations.

CORRECTION OF PETITIONER'S STATEMENT OF FACTS.

The statement of facts in the petition for certiorari (pp. 4-13) entirely omits mention of the facts which are controlling, and skillfully distorts the facts which are stated.

Appreciation of the facts hereinafter set forth is essential to consideration of the issue presented.[5]

1) The collective bargaining negotiations which began on August 31, 1945, and which continued with more than usual success until October 17, 1945, were broken off and terminated by the Union, without fault of Respondent, first, on October 18, 1945, again, after resumption, on November 8, 1945, and finally and completely, without any indicated intention of or subsequent request for resumption, on December 19, 1945.

Neither the Trial Examiner nor the Board made any clear-cut finding of fact as to when, why or by whom the bargaining negotiations were terminated, although these were clearly controlling issues in the case. The Board simply said (R. 113): "Nor are we impressed with the respondent's attempted justification for its action on the ground that the Union broke off negotiations on Decem-

[5] The ultimate facts relied upon are printed in bold type, with substantiating facts in regular type.

ber 19, and that the respondent was therefore relieved of the obligation to deal with it."

In the absence of a clear-cut finding of fact, this was, we submit, an admission, and tantamount to a finding that the Union did break off and finally terminate the bargaining negotiations on December 19, 1945. The uncontradicted, fully corroborated testimony demanded such a finding.

Respondent's witnesses testified positively that the bargaining negotiations were terminated by the Union first on October 18, 1945; again, after resumption, on November 8, 1945, and finally and completely, without any intention of resumption, on December 19, 1945. (R. A. 16, 27-28, 31-32, 19-20, 29-33, 24, 29, 33). This testimony was uncontradicted and, as to the final termination on December 19, 1945, was fully corroborated by the testimony which was elicited by the Trial Examiner from Mr. Douty, "the Union's chief negotiator" (Petition for certiorari, p. 11), as follows (R. A. 10), to-wit:

> "Q. (By Trial Examiner Rogosin): Mr. Douty, was December 19 the date of your last bargaining conference with the company in this case?
>
> A. Yes, sir.
>
> * * * * * * *
>
> Q. Well, what was the position of the parties at the conclusion of that conference on December 19? **Was it contemplated that the parties should meet again with respect to wage proposals?**
>
> A. **Not particularly.** I mean, we broke up not having reached agreement on these points, and our situation at the end of the meeting was one of stalemate on these particular points in dispute." (Emphasis added.).

Considering the issues and his interests, Mr. Douty could not have been expected to more forthrightly admit that the negotiations were completely and finally termi-

nated on December 19, 1945, and that no further negotiations were then contemplated.

Neither the Union nor the Board has ever contended, nor does the Petitioner for certiorari contend, that any resumption of negotiations was requested, or that any desire or intention to resume negotiations was in any way indicated, between December 19, 1945 and January 1, 1946.

The fully established facts that the Union finally and completely terminated the bargaining negotiations on December 19, 1945, and that no further bargaining negotiations were thereafter contemplated or requested, fully sustained the only necessary predicate for the judgment of the Circuit Court (*R.* 125), to-wit, "It appears however to be undisputed in the evidence of Mr. Douty, the representative of the Union in the State, that when the wage increase was granted, collective bargaining negotiations had broken down, **the Union had withdrawn from further bargaining** in connection with the matter, and a strike vote had already been called."[6] (Emphasis added.)

2) **The bargaining negotiations were terminated by the Union, as above set forth, solely because Respondent refused to compel the employees to maintain membership in and pay dues to the Union.**[7]

As above stated, the Board did not make any clear-cut finding as to why the bargaining negotiations were terminated. The uncontradicted and fully corroborated evidence admits of but one answer.

a) The Union became convinced, for the first time, on October 17, 1945, that Respondent was not going to compel

[6] The reference to the strike vote was inappropriate to the issue presented, and unnecessary to the judgment entered (infra, pp. 16-17).

[7] This fact, while illustrative of the merits of the case, is not an ingredient of the question presented and is not essential to Respondent's contention. The substantiating facts here set forth also substantiate the ultimate fact stated at page 16 below, and are designated (a), (b), (c), (d) and (e) to facilitate reference and avoid repetition.

the employees to join, or to remain members of, or to pay dues to, the Union (R. A. 14-15); and Respondent's Exhibits 3 and 4 demonstrate, in clear focus, that bargaining progress, which up to then had been more than usually successful, ended right there.

The conference on October 18, 1945, was devoted primarily to discussion of "Union security" and the incentive wage plan (R. A. 15-16). Mr. Douty led the discussion for the Union with respect to Union security and Mrs. Kanun, who testified that she was in charge for the local Union of the wage negotiations, led the discussion of the incentive wage plan (R. A. 1-2). Just as Mr. Douty was about to terminate the conference, Mrs. Kanun realized, for the first time, that Respondent was offering to guarantee earnings under the incentive wage plan against reduction during the term of the contract (R. A. 15-16). Mrs. Kanun thereupon said to Mr. Douty, in the presence of Respondent's representatives, "I think we had better go into this wage matter further," to which Mr. Douty replied, "There is no sense in talking about it any further" (R. A. 16).

Mr. Douty thereupon, and again on November 8, 1945, and December 19, 1945, informed Respondent that the International Union would not permit the local Union to sign any contract, irrespective of its other provisions, which did not, to the satisfaction of the International Union, bind the employees to maintain membership in and pay dues to the Union (R. A. 15, 19, 21, 27-33)[8]; and, with that explanation, Mr. Douty terminated the October 18, 1945, conference and informed Respondent that the Union intended to call a strike (R. A. 16). A strike notice, as then required by the War Labor Disputes Act, was issued and served four days later, on October 22, 1945 (Petition for certiorari, p. 7).

[8] Mr. Douty denied having made these statements, but all other facts herein stated were uncontradicted.

b) The only objections expressed by the Union to Respondent's initial proposals with respect to the incentive wage plan (Respondent's Exhibit 4, Article II, Section 3, p. 3) arose from Respondent's insistence that disputes arising under said wage plan should be adjusted through collective bargaining and the Union's insistence that such disputes should be settled by arbitration (R. A. 17-18).

At the conference on November 7, 1945, Respondent formally submitted to the Union (Respondent's Exhibit 3, Section 3, at the next to the last page) a proposal to arbitrate all such disputes. Respondent also submitted to the Union a schedule of the wage rates and average hourly earnings under said wage plan which the Union had requested. The Union rejected the amended proposal without reading it, and, without looking at it, said that the schedule of wage rates and earnings was unsatisfactory and unconvincing (R. A. 16-18).

c) At the conference on November 8, 1945, Mr. Douty, for the Union, proposed to Respondent that the Union would support the controverted incentive wage plan (opposition to which had admittedly precipitated the organization of the Union) (R. A. 13) if Respondent would include in the contract provisions requiring the employees to maintain membership in and pay dues to the Union; and stated that the Union would do everything in its power to discredit and destroy the incentive wage plan unless Respondent would include such provisions in the contract. Respondent rejected the proposal.[9]

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[9] Respondent's witnesses all testified to the facts above set forth (R. A. 19-20, 28, 32). Four of the eight employee members of the Union Bargaining Committee took the stand in rebuttal, but none of them contradicted this testimony. Mr. W. J. Moore, an employee member of the Union Bargaining Committee, corroborated Respondent's testimony in this regard (R. A. 36). The Trial Examiner did not make any findings of fact with respect to this corroborated testimony, and the Board entirely ignored Respondent's Exceptions, on that account, to the Intermediate Report of the Trial Examiner (R. 24, 47-48).

d) At the suggestion of the Conciliator, by whom the conferences held on November 7 and 8, 1945, were convened, Respondent offered to facilitate payment of dues to the Union by issuing to each employee two checks, one for the amount of the Union's dues and the other for the balance of the employees' wages; and to provide, in each department of the Mill facilities for endorsing and delivering the first checks to the Union, including a stamp for endorsement to the order of the Union, and a locked box for depositing the checks for delivery to the Union (R. A. 22-23). Respondent was willing to make it easy for the employees to pay dues to the Union, but Respondent was unwilling to force the employees to do so. The Union rejected the above offer, and insisted that the checks for the amount of its dues be drawn directly to its order, so as to avoid the possibility that the employees might refuse to endorse the checks and deliver them to the Union (R. A. 22-23).

e) One of the questions still at issue pertained to the appointment of an arbitrator under the grievance procedure (Respondent's Exhibit 4, p. 18). Respondent had proposed that the arbitrator be named by either of the Judges of the United States District Court for the Northern District of Georgia. The Union had insisted that the arbitrator be named by the Commissioner of Conciliation of the United States Department of Labor. When, on November 8, 1945, Respondent sought to obtain agreement on this disputed issue, the Union stated that it could not make a contract in that regard unless Respondent would agree to include in the contract satisfactory union security and check-off provisions (R. A. 30).

In this situation no bargaining progress was or could have been made. Respondent was sincerely trying to agree with the Union upon a contract, and therefore offered to

make substantial concessions from its previous bargaining insistencies; but the Union's adamant insistences upon contract provisions to protect the Union against the anticipated unwillingness of the employees to maintain membership in and to pay dues to the Union, to the complete exclusion of any bargaining with respect to any other provisions of the contract, precluded any possibility of further bargaining progress.

The Union's termination of the bargaining on October 18, 1945, was regarded by Respondent as bargaining strategy (R. A. 16). The Union's termination of the bargaining on November 8, 1945, was purportedly final and no further bargaining was then anticipated (R. A. 20). Respondent nevertheless resumed bargaining when requested to do so on December 19, 1945 (R. A. 20-21).

Without repeating the details, the situation which existed on November 7 and 8, 1945, also prevailed at the conference which was held on December 19, 1945. Mr. Douty, for the Union, persisted in his refusal to consider or discuss any of the proposals which Respondent had submitted (R. A. 21, 28-29, 32-33) and, in terminating the December 19, 1945 conference, again informed Respondent that the Union would not agree to any contract, and that further negotiations would be a waste of time, unless Respondent would include in the contract provisions which would require the employees to maintain membership in and pay dues to the Union (R. A. 24, 29, 33, 21, 28-29, 32-33); and Mr. Douty testified that no further bargaining negotiations were contemplated when the Union terminated the negotiations, for the third time, on December 19, 1945 (infra, p. 10).

We submit that the bargaining negotiations were terminated by the Union solely because Respondent would not

agree to force any of the employees to maintain membership in and pay dues to the Union; and that the inference throughout the petition for certiorari that the bargaining negotiations broke down on the wage issue, is completely contrary to fact and unjustified. The Board, as stated, did not make any finding as to why the bargaining negotiations were terminated.

3) **Respondent continued to bargain with the Union in complete good faith notwithstanding the threatened strike.**

Substantiation of this statement requires only a repetition or re-consideration of the facts set forth in paragraphs (b)-(e), (pp. 13-14) above, with respect to the reasons why the Union terminated the negotiations; and we will rely upon a re-consideration of said facts by the Court rather than a repetition of them herein.

Verbal notice of the intent to strike was given at the termination of the conference on October 18, 1945, and the required formal notice of intent to strike was issued and served on October 22, 1945.[19]

Respondent, upon request, readily resumed negotiations on November 7 and 8 and again on December 19, 1945; and as above shown [pp. 13-14, paragraphs (b)-(e)], made substantial concessions from its previous bargaining incstencies.

No further bargaining progress was made solely because the Union had, by then, abandoned all pretense of bargaining for the advantages of the employees and was concerned

[19] The strike commenced on April 18, 1946, after another increase had been agreed upon in bargaining initiated by Respondent (R. 121) and was abandoned by the employees on August 26, 1946, following the decision of the Board on August 21, 1946, that Respondent had bargained with the Union in good faith with respect to the incentive wage plan and had only committed an unfair labor practice by increasing the wage rates of the employees without consulting the Union.

only with its fears that the employees, unless compelled to, would not maintain membership in or pay dues to the Union.

The references in the opinion of the Circuit Court to the strike vote were inappropriate to the facts of the case and unnecessary to the judgment entered. The effort in the petition for certiorari and supporting brief to focus attention upon this inappropriate and unnecessary part of the Circuit Court's opinion is clever, but does not justify a writ of certiorari to review a judgment which, on the true facts, was entirely correct.

4) Respondent bargained with the Union in good faith with respect to wages and the situation complained of would have been avoided if the Union had accepted Respondent's wage proposals.

The bargaining negotiations had been completely and finally terminated by the Union, and no further bargaining negotiations were pending, requested or anticipated, when Respondent, because of changed conditions, increased its wage rates in order to maintain its competitive position in the labor market area.

Employee opposition to the recently installed incentive wage plan admittedly precipitated the organization of the Union, and the incentive wage plan was therefore the most important focal point for wage negotiations (R. A. 13). The Board, reversing the Trial Examiner, found and held that Respondent bargained with the Union in good faith, with respect to the incentive wage plan (R. 60, 61-62, infra, p. 5).

No union, however intent upon insuring continuation of its own membership and the check-off of its own dues, would be foolish enough to let that appear to the em-

ployees to be the only bargaining issue. Before this Union broke off and terminated the bargaining negotiations as above set forth, it therefore repeatedly proposed a wage increase of 5¢ per hour.

Throughout the bargaining negotiations, from August 31, 1945, through December 19, 1945, Respondent refused to grant any wage increase.[11]

Each time a wage increase was requested, Respondent fully explained and justified its unwillingness and refusal to grant a wage increase by demonstrating to the Union that the wages which it was then paying were already higher than the wages then being paid by the other comparably situated mills (R. A. 2-4, 8-10, 13-14, 34) and were higher in fact than the "permissible rates" or "guide rates" which had just recently been established by the War Labor Board for Southern textile mills (R. A. 2-4, 8-10, 13-14, 34).

As a part of each such discussion, Respondent also reminded the Union that Respondent had always been among the first of the comparably situated mills to make any

[11] Shortly before the organization of the Union, Respondent, with War Labor Board approval, made general wage increases aggregating 10¢ per hour. The War Labor Board insisted that these increases be added as hourly rates to the earnings under the incentive wage plan, and refused to permit Respondent to work these increases into its incentive rates because the resulting increases in incentive earnings would have exceeded the increases which the Board was then permitting textile mills to make.

When the parties met on December 19, 1945, wage controls had been lifted, and Respondent therefore offered to work these increases into the incentive rates. The effect would have been to increase the average incentive earnings approximately 2¢ per hour.

Respondent did not make this offer as or in lieu of a general increase. Respondent still proposed contract provisions for further bargaining with respect to wages at any time and reiterated the promise that it would increase its rates whenever the other mills with which it competed increased theirs.

This offer could have been accepted without prejudice to further bargaining as proposed by Respondent. It was rejected because the Union was by then bargaining for its own security to the exclusion of bargaining for the benefit of the employees, and the Union was afraid that any increase in earnings would lessen interest in the strike which the Union was trying to promote.

wage increase, and assured the Union that Respondent would increase its wage rates whenever and as soon as the other mills in the locality increased theirs (R. A. 2-4, 8-10, 13-14, 34).

The possibility of a general increase in wage rates throughout the textile industry, particularly in the South, was then contemplated and discussed and Respondent offered to provide in the contract that the contract might be reopened for further bargaining with respect to wages at any time (R. A. 4, 9-10, see also Section 2 of Article II, of the contract proposed to the Union by Respondent, Respondent's Exhibits 3, 4 and 2). This is important, and the fact that no mention was made of it in the petition for a writ of certiorari is indicative of the effort of the petitioner to mislead the Court.

This, plus the fact that Respondent had offered to arbitrate all disputes arising under the incentive wage plan, was the situation which existed with respect to wages when the Union terminated the bargaining negotiations as above set forth.

Not long after the Union terminated the bargaining negotiations, a general wage increase of 5¢ per hour spread like wild fire throughout the textile industry in the Southern states (R. A. 24-25, 33-34).[12] While the possibility of such an increase had been anticipated, neither party had had any inkling that it would come so quickly. The fact that Respondent first learned of the increase at the end of the week preceding January 1, 1946 (which is to say, on or about December 29 or 30, 1945) is uncon-

[12] The Board expressed the opinion (R. 61), contrary, we submit, to its express findings quoted at page 4 above, that the January 1, 1946 wage increase, coming so quickly after the termination of bargaining negotiations, indicated that Respondent was not acting in good faith during the negotiations. Petitioner, note 12, page 26, of the petition for certiorari, expressly disclaims any reliance upon the refusal of the Circuit Court to agree with this opinion; and no issue in that regard is presented by the petition for certiorari.

tradicted (R. A. 33-34). If the Union, through its contact with other mills, had any advance notice of the increase, it did not impart the information to Respondent.

The textile industry is the principal industry in the closely-knit Griffin, Georgia, labor market area; the demand for greatly exceeded the supply of qualified workers; and the competition for employees was keen (R. A. 24-25, 33-34). In order to maintain its competitive position in the labor market, it was necessary that Respondent immediately make substantially the same increase as was being made by the other mills in the locality (R. A. 24-25; 33-34). It so happened that the increase generally being made at that time was substantially what the Union had requested before it terminated the bargaining negotiations.

As a courtesy, not a duty, Respondent sent for the President and other Bargaining Committeemen of the Local Union and informed them in detail of the wage increase which it was about to announce (R. A. 34-35). Respondent also mailed detailed schedules of the increase to Mr. Douty, the Georgia Director of the International Union [Board's Exhibit 12 (A-F); BA 130-135]. The President and Bargaining Committeemen of the Local Union expressed approval of and appreciation for the increase (R. A. 34-35). No one requested further bargaining.[13]

There was no reason during the bargaining negotiations, from August 31, 1945, through December 19, 1945, why

[13] Respondent does not wish to raise any issue of fact at this time. Respondent contended in the Circuit Court that the Board's finding of fact, that the increase was made without consulting the Union, was unjustified. If the January 1, 1946 wage increase would have afforded any basis for closing the contract, it seems reasonable to assume that the Union would have requested a resumption of negotiations as soon as it learned that the wage increase was being made. If the January 1, 1946 wage increase would not have afforded any basis for closing the contract, there was no conceivable need or purpose for Respondent to do anything more than inform the Union that it had, because of increases being made throughout the industry, determined to make the increase which the Union, during bargaining, had requested.

Respondent should increase its wage rates, which were already higher than the rates being paid by the mills with which it competed for labor (R. A. 2-4, 8-10, 13-14, 34). There was every reason why Respondent should, as it wanted to do and did do, maintain its position of paying rates a bit higher than the rates paid by its competitors and its reputation of always being among the first of the mills to increase wages (R. A. 24-25, 33-34). Getting employees back, even if possible, is never as good as keeping them satisfied, and time was of the essence of the purpose of the increase which Respondent made.

The Union and not Respondent was responsible for the situation which then existed. Respondent had fully explained and justified its refusal to increase its wage rates which were already higher than the rates being paid by its competitors, and higher in fact than the War Labor Board was then permitting comparably situated mills to pay; and Respondent had assured the Union that it would increase its rates as soon as its competitors increased theirs; and Respondent had diligently endeavored to persuade the Union to close the contract with a provision whereby the contract could be re-opened for further bargaining with respect to wages at any time.

If the Union had closed the contract as proposed and urged by Respondent, the contract would have been re-opened for further bargaining with respect to wages when the anticipated industry-wide wage increase occurred; and the situation complained of would have been avoided. The trouble was that the Union was so intent upon obtaining security for itself that it had completely abandoned its duty to bargain for the benefit of the employees whom it was supposed to represent, and it therefore broke off and completely terminated the bargaining negotiations as above set forth.

Because of the Union's action, and through no fault of Respondent, no further bargaining negotiations were pending, requested or anticipated when Respondent, in order to maintain its competitive position in the labor market, made the wage increase which is here complained of.

"THE PROCEEDING IN THE COURT BELOW."

The quotations from Respondent's answer to the Board's petition for enforcement and from Respondent's brief in the Circuit Court, which are set forth under the above caption at p. 16 of the petition for certiorari, are incomplete and are therefore misleading. Respondent respectfully requests that the Court compare the quotation from its answer with the appropriate paragraph of the answer appearing at page 121 of the Record, and the quotation from its brief with the two paragraphs commencing at the bottom of page 49 of the brief.[14]

"SPECIFICATION OF ERRORS TO BE URGED."

The "errors" specified at pp. 17-18 of the petition for certiorari are not relevant to the facts or merits of the case, and therefore do not warrant the issuance of the writ prayed for.

1. The Court did not hold that a mere impasse in bargaining negotiations authorizes an employer to institute unilateral changes in rates of pay. The Court, on the facts of this case, correctly held that Respondent did not refuse to bargain by increasing its wage rates after the Union had completely terminated the bargaining negotiations, "had withdrawn from further bargaining," and where no further bargaining negotiations were pending, requested or

[14] The appendix to Respondent's brief in the Circuit Court was printed with the brief, and the brief is therefore on file in this Court.

anticipated when the wage increase was granted. The Court simply held, in effect, that Respondent could not refuse to do what it was not requested to do.

2. Nor did the Court hold that the taking of a strike vote authorizes an employer to effectuate unilateral changes in rates of pay. Respondent bargained with the Union in good faith after and notwithstanding the notice of intent to strike, and made substantial concessions from its previous bargaining insistencies in its effort to reach agreement with the Union on a contract (infra, pp. 16-17). The incidental reference to the strike vote in the opinion of the Circuit Court was not appropriate to the facts of the case or necessary to the judgment entered.

3. Nor did the Court hold that anticipated wage increases by competitors in the labor market authorize an employer to effectuate unilateral changes in the rates of pay. The Court, on the facts of this case, simply held that where collective bargaining negotiations have been terminated by the Union without fault of the employer, and no further bargaining negotiations are pending, requested or anticipated, an employer may unilaterally increase its wage rates so as to maintain its position in a competitive labor market.

4. Paragraph 4 is a mere generalization which does not merit comment.

5 and 6. Respondent did not contend, and the Court did not hold, that the Board's order should not be enforced because it had already been complied with. Respondent expressly disclaimed any such contention (pp. 49-50 of Respondent's Brief in the Circuit Court). Respondent contended and the Court held that the Board's order should not be enforced because it should not have been issued.

Respondent also contended, as a further reason why the order should not be enforced, that the post-hearing conduct of the Union had precluded the possibility of further bargaining and had therefore relieved Respondent of any duty to comply with the order; and Respondent requested appropriate opportunity to prove the facts alleged. The portion of the opinion of the Circuit Court which is introduced by the phrase, "and in the light of the earnest assertion by Respondent," is obviously dicta which was not appropriate to the issue presented or necessary to the judgment entered.

Certiorari should not issue to correct mere dicta in an opinion issued in connection with a perfectly sound judgment, especially not where it is obvious that the dicta will not ever have any precedent value.

7. Paragraph 7 is also a mere generalization which does not merit comment.

THERE IS NO CONFLICT OF DECISIONS ON THE ONLY QUESTION OF SUBSTANCE PRESENTED.

Respondent respectfully submits that the only question of substance is clearly stated at page 3 above; and that as to it there is no conflict of authority.

There must be a request to bargain before there can be a refusal to bargain. Respondent cannot properly be held to have refused to do what it was not requested or under any duty to do.[15]

The Union first terminated the bargaining on October 18, 1945. Respondent was requested to resume bargaining on

[15] N. L. R. B. v. Columbia Enameling Co., 306 U. S. 292, 298; and N. L. R. B. v. Sands Mfg. Co., 306 U. S. 332, 344; infra, pp. 28-29.

November 7, 1945, and it did so (infra, p. 16). If it had not, it would have been guilty of a refusal to bargain. Respondent was anxious to complete the contract, and it therefore not only resumed bargaining, but, in a sincere effort to reach agreement, made substantial concessions from its previous bargaining insistencies [infra, pp. 13-14, Pars. (b)-(e)].

The Union terminated the bargaining again on November 8, 1945; and Respondent, upon request, resumed bargaining again on December 19, 1945 (infra, p. 16).

The Union terminated the bargaining again, this time finally and completely, on December 19, 1945. No request to resume bargaining was thereafter made, nor was any desire or intention on the part of the Union to thereafter resume bargaining in anywise indicated (infra, pp. 9-11).

No further bargaining was pending, requested or anticipated, when the complained of wage increase was granted.

Respondent had repeatedly assured the Union that it would increase its wage rates whenever its competitors increased theirs and Respondent had urged the Union to close the contract with a provision for further bargaining with respect to wages at any time.

The industry-wide increase which had been anticipated during the bargaining negotiations occurred. The Union, through its contacts with other mills, knew of the industry-wide increase as soon as, if not sooner than, Respondent did, and the Union had no reason to doubt the assurances which Respondent had repeatedly given it.

The Union had terminated the bargaining and if further bargaining was desired, the Union should have requested it. If was not up to Respondent to seek out the

Union and request a resumption of the negotiations which the Union had terminated.

None of the decisions cited in the brief in support of the petition for certiorari are at all applicable to this situation.

In **May Department Stores Company v. National Labor Relations Board, 326 U. S. 376,** the unilateral wage increase was simply a part of a prevailing refusal to recognize the Union, and an unauthorized refusal to bargain with a union which was diligently asserting and trying to exercise its bargaining authority. The Union in that case had been and was doing everything which it could do to bring about contract negotiations. The best that can be said of the company, in that case, is that it was refusing to bargain because it erroneously disputed the Board's determination of the appropriate unit. In truth, the total circumstances, including the method of publicizing the company's application to the War Labor Board, clearly indicated a pervading refusal to respect the rights of the employees to organize as provided by the National Labor Relations Act.

There is, we submit, no similarity between the facts of the May Department Stores case and the facts of the case now before the Court; nor is there any conflict between the decision in that case and the judgment of the Circuit Court which is here attacked.

There is, if possible, even less conflict between the judgment here attacked and the decision of the Fourth Circuit Court of Appeals in **Jeffery-DeWitt Insulator Co. v. National Labor Relations Board, 91 F. 2d 134.**

In the cited case, the company refused an express request to bargain. The refusal to bargain was admitted.

The company attempted to justify it on the ground that an impasse in bargaining had occurred about a month earlier.[16]

The cited case would have been applicable if Respondent had refused to resume bargaining negotiations on November 7 and December 19 because of the terminations of bargaining which had occurred on October 18 and November 8; but the undisputed, completely distinguishing facts are, (1) that Respondent, upon request, resumed bargaining and bargained in good faith on November 7 and 8 and December 19, 1945, and (2) that no resumption of bargaining was requested, and that no desire or intention of the Union to resume bargaining was in anywise indicated, after the Union finally terminated the bargaining on December 19, 1945.

The only other citation in the brief in support of the petition for certiorari which is at all pertinent to the only question of substance presented, is the citation to the decision and order of the National Labor Relations Board in **Matter of Craddock-Terry Shoe Corporation, 73 N. L. R. B. 1339, 1342.**

While not necessary to our position, we make the point that certiorari is not called for by a conflict between a decision of a Circuit Court of Appeals and a decision and order of the National Labor Relations Board; otherwise, certiorari would be called for whenever a Circuit Court refused to enforce a Board order.

Actually, there is no conflict between the judgment here attacked and the decision and order of the Board in the Craddock-Terry Shoe Corporation case.

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[16] At p. 136, "In asking that the order be set aside, the company makes three contentions: . . . (2) that the company was not guilty of any unfair labor practice in refusing to negotiate further after an impasse had been reached in negotiations; . . ." See also headnotes 6-8, at pages 139-140, 91 F. 2d.

In the cited Board case, the Board found that "No impasse in bargaining had been reached" when the unilateral increase was announced. Actually, wage negotiations, initiated by the Union, had merely been postponed, at the request of the Company, to afford the Company an opportunity to study a War Labor Board Directive upon which the Union's wage proposals were based; and it was in this situation, so the Board found, that the Company, "motivated by a desire to undermine the CIO as the employees' representative," unilaterally made the wage increase which the Union had proposed and which the Company had requested time to consider. The situation here was entirely different.

To have enforced the Board's order in the case now before the Court, the Court below would have had to hold that it was up to Respondent to seek out the Union and request a resumption of the bargaining which the Union, without fault of Respondent, had terminated; which would have been expressly contrary to the Circuit Court's own decision in

N. L. R. B. v. Whittier Mills, 123 Fed. 2d 725,

and contrary, in principle, to the decisions of this Court in:

N. L. R. B. v. Columbia Enameling Co., 306 U. S. 292, at 298:

"To put the employer in default here the employees must at least have signified to respondent their desire to negotiate. Measured by this test, the Board's conclusion that respondent refused to bargain with the Union is without support, for the reason that there is no evidence that the Union gave to the employer . . . any indication of its willingness to bargain. . . . **The employer cannot, under the statute, be charged with refusal of that which is not proffered.**" (Emphasis added.)

And in

N. L. R. B. v. Sands Manufacturing Co., 306 U. S. 332, at 344:

> "There could be, therefore, no duty on either side to enter into further negotiations for collective bargaining in the absence of a request therefor by the employees."

Such a decision would have also conflicted in principle with numerous decisions of other Circuit Courts of Appeal[17] holding that the responsibility for initiating collective bargaining negotiations rests on the employees and the Union, and not on the employer.

We submit therefore that, as to the only question of substance presented, there is no basis for certiorari, but that there would have been if the decision contended for by the Petitioner had been rendered.

Other Decisions Cited by Petitioner.

The decisions cited by Petitioner at pp. 24-30 of the brief in support of the petition for certiorari relate to Petitioner's contentions with respect to the obviously inappropriate and unnecessary references, in the opinion of the Circuit Court, to the strike vote and to the post-hearing facts which Respondent alleged and prayed appropriate opportunity to prove.

Respondent did not contend in the Circuit Court, and will not ever contend, that the threatened strike relieved Respondent of the duty to continue to bargain with the

---

17 Such as:

Great Southern Trucking Co. v. N. L. R. B., 127 F. 2d 180 (1), at 185;

Reliance Mfg. Co. v. N. L. R. B., 125 F. 2d 311, at 315;

N. L. R. B. v. West Kentucky Coal Co., 152 F. 2d 198 (2).

Union whenever requested to do so, or that enforcement of the Board's order should have been denied because the order had already been complied with. Respondent has at all times fully recognized the authority of the decisions cited by the Petitioner to these points, and there will be no occasion for any decision by this Court on these points if the prayed-for writ of certiorari is issued.

Respondent bargained with the Union in good faith, notwithstanding the threatened strike, whenever it was requested to do so (infra, pp. 16-17), and the attempted injection of the "strike vote" issue into this case is entirely artificial and wholly unrelated to the facts and merits of the controversy.

The same is true of the equally artificial issue as to compliance with the Board's order. Respondent emphatically stated in its brief to the Circuit Court (pp. 49-50 thereof) that it does not rely upon the fact, although it is a fact that the Board's order had been fully complied with before the petition for enforcement was filed (infra, p. 22).

Respondent contended in the Court below, as it contends here, that the January 1, 1946, wage increase did not constitute a refusal to bargain because the Union had, on December 19, 1945, finally and completely terminated the bargaining, without indicating any desire or intention to resume bargaining; and because no further bargaining was pending, requested or anticipated when Respondent, in order to maintain its position in the highly competitive labor market, made the wage increase complained of; and that the petition for enforcement should therefore be denied.

Respondent also contended, on the evidence in the record, that the Board's order should not be enforced because the Union, prior to January 1, 1946, so abandoned its agency

responsibilities that it forfeited its agency authority (R. 24, Par. II). This contention was not ruled on by the Board or the Circuit Court and no question with respect to it is presented by the petition for certiorari.

Respondent, relying upon and calling attention to the decision of this Court in **N. L. R. B. v. Jones & Laughlin, 331 U. S. 416, 91 L. Ed. 1575 (8) 1582,**[18] also alleged in its answer to the petition for enforcement (R. 119, 121 [5]), as a further and additional reason why said order should not be enforced, that the Union, after the hearings before the Trial Examiner and the issuance of the Board's order, had so completely frustrated and defeated Respondent's repeated and earnest efforts to bargain with the Union that Respondent should be relieved of any duty to further comply with said order; and Respondent prayed (R. 121) "that the Court hear, or provide for the taking of, evidence regarding the facts and matters alleged."

The Court below did not grant Respondent's prayer for leave to prove the post-order facts alleged; and no issue as to whether the Court should have done so, or as to whether enforcement of the order should have been denied after proof of said facts, is presented by the petition for certiorari.

The Circuit Court sustained Respondent's primary contention, and denied enforcement of the Board's order because "the Union had withdrawn from further bargaining" and no further bargaining was pending, requested or anticipated when the wage increase was granted, and because "under these circumstances it does not appear to be an unfair labor practice to grant a general increase in wages to the employees without consulting the Union."

---

[18] "When circumstances do arise after the Board's order has been issued which may affect the propriety of enforcement of the order, the reviewing court has discretion to decide the matter itself or to remand it to the Board for further consideration."

We can only repeat that the portion of the opinion of the Circuit Court (R. 124, 126) which is introduced by the phrase "and in the light of the earnest assertion by the Respondent" is obviously mere dicta which was not appropriate to the issue presented or necessary to the judgment correctly entered; and that a writ of certiorari should not be issued on account of erroneous but unnecessary and inappropriate dicta, of no precedent value, where the judgment entered was entirely consistent with the decisions of this Court and of the other Circuit Courts, and correct.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

No. 197.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

CROMPTON-HIGHLAND MILLS, INC.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF

Of Crompton-Highland Mills, Inc.
(Hereinafter Called Respondent).

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IN THE

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CROMPTON-HIGHLAND MILLS, INC.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF

Of Crompton-Highland Mills, Inc.
(Hereinafter Called Respondent).

JUDGMENT AND OPINION OF THE COURT BELOW.

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on May 5, 1948 (R. 127), as follows, towit:

"This cause came on to be heard on the petition of the National Labor Relations Board for the enforcement of an order of the National Labor Relations

Board made on August 21, 1946, as amended on August 26, 1946, "In the Matter of Crompton-Highland Mills, Inc., and Textile Workers Union of America, C. I. O.," Case No. 10-C-1812, and was argued by counsel:

"On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition for enforcement of the order of the National Labor Relations Board in this cause be, and the same is hereby denied."

The opinion of said Court (R. 124-126) is reported at 167 Fed. (2) 662.

We shall endeavor to demonstrate that the judgment was correct and should be affirmed. We shall not attempt to sustain all of the dicta in the opinion.

The Intermediate Report of the Trial Examiner of the National Labor Relations Board, hereinafter called the Board, was issued on March 25, 1946 (R. 69-106). The Decision and Order of the Board was issued on August 21, 1946 (R. 59-68), amended on August 26, 1946 (R. 110-111) and corrected on September 5, 1946 (R. 112-113).[1]

JURISDICTION.

A petition for a Writ of Certiorari was granted, and the Writ was issued, on October 11, 1948 (R. 129).

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[1] References to Volume I of the printed Transcript of Record are designated "R."

The appendix to Respondent's brief in the Circuit Court has been reprinted at pages 164-191 of Volume II of the Transcript of Record, and references thereto are designated "R. A."

QUESTIONS PRESENTED.

The statements of the questions presented, at p. 2 of Petitioner's brief, are not attuned to the facts of the case and are therefore inaccurate and misleading.

I.

The question stated in paragraph 1, p. 2, of Petitioner's brief is inaccurate and misleading because considerably more than "an impasse in bargaining negotiations" occurred. The Union, without fault of Respondent, terminated the bargaining, first on October 18, 1945, again, after resumption, on November 8, 1945, and finally and completely, without then or thereafter indicating any desire or intention of ever resuming bargaining, on December 19, 1945; and no bargaining was pending, requested or anticipated when the complained of wage increase was made. Respondent had demonstrated a sincere desire to agree upon a contract and a willingness to bargain in complete good faith whenever requested to do so; and the situation complained of would not have arisen if the Union had accepted the proposals for further bargaining which were made by Respondent during the bargaining.

Respondent therefore respectfully submits that the **primary question at issue** is more accurately stated as follows:

Whether Respondent refused to bargain with the Union by unilaterally increasing its wage rates on January 1, 1946, after collective bargaining, which commenced on August 31, 1945, and continued with more than usual success through October 17, 1945, had been broken off and terminated by the Union, without fault of Respondent, first on October 18, 1945; again, after resumption, on No-

vember 8, 1945, and finally and completely on December 19, 1949, and where no further collective bargaining was pending, requested or anticipated when said wage increase was made, and Respondent had demonstrated a sincere desire to agree upon a contract and a willingness to bargain in complete good faith whenever requested to do so, and the situation complained of would not have arisen if the Union had accepted the proposals for further bargaining which were made by Respondent during the bargaining.

II.

The questions stated in paragraphs 2 and 3, p. 2, of Petitioner's brief, while somewhat attuned to dicta in the Opinion of the Circuit Court, are not at all related to the facts of the case, or to the contentions of Respondent, or to the actual judgment of the Circuit Court. The answer to both of said questions is quite obviously "No," and Respondent does not contend, and has not ever contended, to the contrary. It may be that the erroneous dicta in the Opinion of the Circuit Court should be corrected. It surely is that the merits of the case should not get lost in the process.

The questions at issue in this regard are subsidiary to the primary question above stated, and, so far as concerns the proper disposition of the case, need not be considered unless the above stated primary question is determined adversely to the contention of Respondent.

Respondent respectfully submits that these subsidiary questions should be stated substantially as follows, to-wit:

A. Assuming, contrary to Respondent's contentions, that the order of the Board was properly issued, should said order be enforced where, after the issuance of said

order and before the filing of the petition for enforcement, the parties bargained to agreement on a complete contract and the Union, by refusing to sign the contract which was agreed upon, made further compliance with said order unreasonable if not impossible.

B. Should Respondent be afforded opportunity, somewhere, to prove the facts alleged and relied upon.

III.

There is another **subsidiary, but very important question** which is not mentioned in Petitioner's brief, to-wit:

Should the order, if enforced, be modified so as to restrict it to the only unfair labor practice found to have been committed, namely, making a general increase in wage rates without consulting the Union;

Or, stated differently but to the same effect,

Should an employer be enjoined from doing what it has not done or given any indication of intending or of being apt to do; or ordered to do what, before the issuance of said order, it had willingly and in good faith done.

STATEMENT OF THE CASE

PERTINENT FACTS.

The statement of the case, at pages 3-18 of Petitioner's brief, omits mention of the facts which are controlling, includes facts which are immaterial, distorts certain of the facts which are stated, and is skillfully misleading.

To avoid confusion the statement of the post-hearing facts alleged and relied upon, and which we seek leave to prove, in support of Respondent's contentions with respect to the subsidiary questions (II) stated at pp. 4-5 above, will be confined to the section of this brief in which said questions are argued, infra, pp. 43 to 52; and the present statement will be confined to facts which appear, without contradiction, from the record now before the Court.

The following are the undisputed and indisputable facts, and the only facts, which are necessary to a determination of the primary question (I) stated at page 3 above, and the subsidiary but very important question (III) alternatively stated at page 5 above.

Respondent Sincerely Tried to Agree With the Union Upon a Contract.

The bargaining authority of the Union was certified by the Board on August 13, 1945 (R. 72) and collective bargaining negotiations were commenced, by mutual agreement, on August 31, 1945 (R. 76). The Union's contract proposal was submitted to Respondent in advance of the first bargaining conference and Respondent's counter-proposal (Respondent's Exhibit 3) was submitted to the Union at the first bargaining conference on August 31, 1945 (R. A. 166-168).

A Stipulation of Counsel with respect to Respondent's Exhibits 3, 4 and 2 is set forth in Respondent's appendix at pages 166-168 thereof, and should be referred to in connection with all references to said Exhibits. Said Exhibits are a graphic account of the bargaining negotiations and therefore merit careful consideration, although not mentioned in Petitioner's brief.

Said Exhibits have not been printed as a part of the record. By order of the Circuit Court, the Clerk of that Court certified the original Exhibits as a part of the documentary evidence which was considered by the Circuit Court and the original Exhibits are now on file in the office of the Clerk of this Court. Pursuant to the "Stipulation as to the Record" (R. 130), nine photographic copies of said Exhibits have been made available to this Court.

Respondent's Exhibit 3 is a copy of the contract which Respondent proposed to the Union at the first bargaining conference on August 31, 1945. The interlineations, deletions and attached riders show the concessions and alterations which Respondent agreed to in collective bargaining, and the marginal dates are the dates on which collectively bargained agreements were reached on the various sections as modified (R. A. 166-168).

So many changes in Respondent's original proposal were agreed upon in collective bargaining that the bargaining representatives of both parties encountered difficulty in keeping up with them. To facilitate further bargaining, Respondent prepared, and on October 12, 1945 presented to the Union, a memorandum of the contract provisions which had, up to that time, been agreed upon and of Respondent's proposals as to the provisions which had not been agreed upon (R. A. 168). **Respondent's Exhibit 4 is a copy of this memorandum.** The typewritten

marginal dates are the same as the marginal dates on Respondent's Exhibit 3 and are the dates of the agreements made in collective bargaining prior to October 12, 1945. The interlineations, deletions and attached riders, and the red pencil marginal dates, show the changes agreed upon, and the dates on which agreements were reached in collective bargaining, after October 12, 1945 (R. A. 168).

Respondent's Exhibit 2 was identified out of order at the request of the Board's attorney and logically should follow Respondent's Exhibits 3 and 4 (R. A. 166-168). It is a copy of an amendment of Respondent's proposal with respect to "Wage Rates and Work Assignments" (Art. II of Respondent's Exhibits 3 and 4) which Respondent submitted to the Union on November 7, 1945. The record shows without dispute that the Union rejected the amended proposal without even looking at it (R. A. 176); and the Board, reversing the Trial Examiner, found that Respondent bargained with the Union in good faith with respect to the controverted incentive wage plan and work assignments under said plan (R. 60, 61-62; infra, pp. 54 to 55).

Respondent's Exhibits 3 and 4 show, very clearly, that the parties bargained with more than usual success from August 31, 1945 through October 17, 1945.

If, in examining Respondent's Exhibits 3 and 4, the Court will remember that the failure to reach agreement with respect to Art. II thereof cannot possibly be charged to Respondent, since the Union rejected Respondent's amended proposal (Respondent's Exhibit 2) without reading it (R. A. 176), an examination of Respondent's Exhibits 3 and 4 will, we are confident, convince the Court that Respondent bargained with the Union in complete

good faith; in a sincere effort to agree upon a contract, and almost succeeded in its effort to persuade the Union to agree upon a contract.

The above, we submit, is the background against which all other facts should be considered, and without an appreciation of which the questions at issue cannot be properly evaluated or determined; and we earnestly request that the Court carefully examine Respondent's Exhibits 3 and 4.

The Union, Without Fault of Respondent, Terminated the Bargaining, First on October 18, 1945, Again, After Resumption, on November 8, 1945, and Finally and Completely, Without Then or Thereafter Indicating Any Desire or Intention of Ever Resuming It, on December 19, 1945; and No Further Bargaining Was Pending, Requested or Anticipated When the Complained of Wage Increase Was Made.

Respondent respectfully submits that these are the controlling facts in the case and that everything else is either background or collateral thereto. The testimony regarding these facts (R. A. 174, 177-178, 180, 183-187) was positive and uncontradicted.

The Union first terminated the bargaining, and gave notice of its intent to strike, on October 18, 1945 (R. A. 174, 183-187).

Respondent regarded this termination of the bargaining, and the accompanying strike threat, as bargaining strategy (R. A. 174-175, 186)—what Petitioner refers to as a bargaining impasse.

Further bargaining conferences were convened on November 7, 1945, and continued through November 8, 1945 (R. A. 175-178).

The Union terminated the bargaining again on November 8, 1945 (R. A. 177-178, 184, 187). Respondent did not regard this as bargaining strategy, but believed that it was a sincere and final breaking off and termination of the bargaining negotiations (R. A. 177).

A further bargaining conference was however requested and held on December 19, 1945 (R. A. 178). The Union again terminated the bargaining on December 19, 1945, this time finally and completely; and no further bargaining was thereafter requested or anticipated (R. A. 180, 184, 187).

The record references hereinabove made are all to the testimony of Respondent's witness. Neither the Union nor the Board offered any evidence regarding the terminations of the bargaining on October 18, 1945, and November 8, 1945, except as to the October 18 and 22, 1945, notices of the intent to strike.

Respondent's testimony as to the final termination on December 19, 1945, was, however, fully corroborated by the testimony of Mr. Douty, on examination by the Trial Examiner, as follows (R. A. 170), to-wit:

> "Q. (By Trial Examiner Rogosin): Mr. Douty, was December 19 the date of your last bargaining conference with the company in this case?
>
> A. Yes, sir.
>
> Q. Well, what was the position of the parties at the conclusion of that conference on December 19? **Was it contemplated that the parties should meet again with respect to wage proposals?**
>
> A. **Not particularly.** I mean, we broke up not having reached agreement on these points, and our situation at the end of the meeting was one of stalemate on these particular points in dispute." (Emphasis added.)

Considering the issues and his interest, Mr. Douty could not have been expected to more forthrightly admit that the bargaining was completely and finally terminated on December 19, 1945, and that no further bargaining was then contemplated or intended. It is certainly true (R. A. 180, 184, 187) that Respondent believed, and was fully justified in believing, that the Union had completely terminated the bargaining, and that no further bargaining was intended or contemplated.

Neither the Union nor the Board has ever contended, nor does Petitioner contend, that any resumption of bargaining was requested, or that any desire or intention to resume bargaining was in any way indicated by the Union, after December 19, 1945.[2]

Neither the Trial Examiner nor the Board made any clear-cut finding of fact as to when, why or by whom the bargaining was terminated. The Board simply said (R. 113) "Nor are we impressed with the respondent's attempted justification for its action on the ground that the Union broke off negotiations on December 19, and that respondent was therefore relieved of the obligation to deal with it."

In the absence of a clear-cut finding of fact, this was, we submit, an admission, and tantamount to a finding, that the Union did break off and finally terminate the bargaining on December 19, 1945.

We submit also that, in the absence of any finding of fact to the contrary, the above referred to positive, uncontradicted, corroborated testimony of Respondent's witnesses should be accepted as true.

[2] Bargaining negotiations were resumed at the request of Respondent (infra, pp. 43 to 52) after the hearings before the Trial Examiner and before the strike commenced, but the facts here being stated are confined to the facts appearing from the record of the hearings before the Trial Examiner.

We submit therefore that although we cannot point to any finding of fact by the Board (no finding pro or con having been made by the Board) the record clearly shows that the Union, without fault of Respondent, terminated the bargaining, first on October 18, 1945, again, after resumption, on November 8, 1945, and again, this time finally and completely, on December 19, 1945; that the Union did not then or thereafter request that the bargaining be resumed or in any way indicate any desire or intention to ever resume the bargaining which it had terminated; and that no further bargaining was pending, requested or anticipated when the complained of wage increase was made on January 1, 1946.

Respondent Resumed and Continued Bargaining Notwithstanding the Threat of Strike and at All Times Demonstrated a Willingness to Bargain in Good Faith Whenever Requested to do so.

The bargaining conferences from August 31, 1945 through October 18, 1945 were arranged for by mutual agreement, and to the mutual satisfaction, of the parties (R. A. 169-170).

Informal notice of the Union's intention to call a strike was given at the termination of the bargaining conference which was held on October 18, 1945 (R. A. 174). Formal notice of the intent to strike was filed four days later on October 22, 1945 (R. A. 87).

The conferences which were held on November 7, and 8, 1945, were convened at the request of a Commissioner

* While this fact does not appear from the record now before the Court, the Court should know that the threatened strike did not commence until April 18, 1946, two months after the hearings before the Trial Examiner were completed, and after Respondent had initiated a resumption of the collective bargaining negotiations and had made substantial additional progress in its effort to persuade the Union to make a contract. (See infra, pp. 43 to 52.)

of Conciliation of the United States Department of Labor and not at the request of the Union (R. A. 175, 171). Respondent willingly resumed negotiations in response to this request (R. A. 173), and, in a "second mile" effort to reach agreement with the Union, made substantial concessions from its previous bargaining insistencies (R. A. 175-177, 179, 185).

Two of the things which occurred at these conferences should adequately illustrate the truth of the statement just made.

The only objections expressed by the Union to Respondent's initial proposal with respect to the incentive wage plan (Art. II, Sec. 3, p. 5 of Respondent's Exhibit 4) arose from Respondent's insistence that disputes as to work loads and work assignments under said plan (the amount of work to be done for the wage agreed upon), should, like wage disputes, be adjusted through collective bargaining and conciliation, and the Union's insistence that such disputes should be settled by arbitration (R. A. 175-176).

At the conference on November 7, 1945, Respondent acceded to the Union's demands and submitted to the Union (Respondent's Exhibit 2, Sec. 3, at the next to the last page) a proposal for the arbitration of all such disputes. Respondent also submitted to the Union a schedule of the average hourly earnings under the wage plan, which the Union had requested (R. A. 175). The Union rejected the arbitration proposal (Respondent's Exhibit 2) without reading it (R. A. 176) and, without looking at it, said that the schedule of average earnings was not the information which it wanted and that it was not satisfied with it (R. A. 175).

[1] See N. L. R. B. v. Columbia Enameling Co., 306 U. S. 292, 83 L. Ed. 660, footnote 2.

Instead of considering Respondent's amended proposal with respect to the incentive wage plan (Respondent's Exhibit 2), Mr. Douty, for the International Union, proposed that the Union would support the incentive wage plan (opposition to which had admittedly precipitated the organization of the Local Union) (R. A. 172) if Respondent would agree to require the employees who were then members of the Union to maintain membership in and pay dues to the Union; and gave notice that the Union would do everything in its power to discredit and destroy the wage plan unless Respondent would agree to include in the contract provisions for the security of the Union and the check-off of its dues. Respondent, as in simple honesty it should have, rejected this proposal.[3]

In an effort to solve the controversy as to whether membership in and support of the Union should be voluntary or compulsory, Respondent, at the suggestion of the Conciliator (R. A. 179), offered to issue two checks to each employee on the first pay day in every month, one check for the amount of the Union's dues and the other for the balance of the employee's wages; and to provide in each department of the Mill a conveniently located stamp for endorsement to the order of the Union and a locked box in which the employees could deposit checks for delivery to the Union (R. A. 179). The Union rejected the proposed compromise and insisted that the checks for the amount of its dues be drawn directly to its order (R. A. 179), so as to avoid the possibility that the employees

[3] Respondent's witnesses all testified to the facts above set forth (R. A. 177, 183, 186-187). Four of the eight employee members of the Union Bargaining Committee took the stand in rebuttal, but none of them contradicted this testimony. Mr. W. J. Moore, an employee member of the Union Bargaining Committee, corroborated Respondent's testimony in this regard (R. A. 189-190). The Trial Examiner did not make any finding of fact with respect to this corroborated testimony, and the Board entirely ignored Respondent's Exceptions, on that account, to the Intermediate Report of the Trial Examiner (R. 24, 47-48). The Board did hold (R. 60 & 62; infra, pp. 54 to 55) that Respondent bargained with the Union in good faith with respect to the incentive wage plan.

might be unwilling to endorse the checks and drop them in the box for delivery to the Union.

The Board did not make any findings, pro or con, as to whether Respondent continued to bargain with the Union notwithstanding the threat of strike, or as to whether Respondent demonstrated a willingness to bargain in good faith whenever requested to do so.

Here again we say that in the absence of any finding, pro or con, by the board, the Court must of necessity look to the evidence for the facts. The true facts, and the contentions of one of the parties, should not be ignored merely because the Board, in issuing the order which it seeks to enforce, failed to make any finding, pro or con, with respect thereto.

Respondent Bargained With the Union in Good Faith With Respect to Wages and the Situation Complained of Would Not Have Arisen if the Union Had Accepted the Proposals for Further Bargaining With Respect to Wages Which Were Made by Respondent During the Bargaining.

Respondent admits that the Union, throughout the bargaining negotiations, repeatedly proposed a wage increase of 5c per hour for all employees (R. A. 172) and that Respondent, throughout the bargaining negotiations, from August 31, 1945 through December 19, 1945, refused to grant any wage increase.[6] The bargaining with respect to wages was none the less in good faith.

[6] Shortly before the organization of the Union, Respondent, with War Labor Board approval, made general wage increases aggregating 10c per hour. The War Labor Board insisted that these increases be added as hourly rates to the earnings under the incentive wage plan, and refused to permit Respondent to work these increases into its incentive rates, because the resulting increases in incentive earnings would have exceeded the increases which the Board was then permitting textile mills to make.

When the parties met on December 19, 1945, wage controls had been lifted, and Respondent therefore offered to work these increases into the

Each time the requested wage increase was discussed Respondent fully explained and justified its unwillingness and refusal to grant any wage increase by demonstrating to the Union that the wages which Respondent was then paying were already higher than the wages then being paid by the other comparably situated mills (R. A. 165-166, 169, 170, 172-182, 188) and were higher in fact than the "permissible rates" or "guide rates" which had just recently been established by the War Labor Board for Southern textile mills (R. A. 165-173).[7]

Respondent made four counter-proposals with respect to wages.[7]

1. Throughout the bargaining Respondent repeatedly admitted doubt as to whether the guaranteed minimum rates under the incentive wage plan were properly related to the remainder of the existing schedule of rates, suggested that the parties should, in bargaining, agree upon a rescheduling or realignment of the guaranteed minimum rates; and endeavored to persuade the Union to make some proposal in that regard; but the Union refused to do so (Board's Appendix p. 54).

The probability of a general increase in wage rates throughout the textile industry, particularly in the South,

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incentive rates. The effect would have been to increase the average incentive earnings approximately 2c per hour.

The attempt of the Board and Petitioner to treat this as a counter-wage-proposal is completely unjustified and misleading.

Respondent did not make this offer as or in lieu of a general increase. Respondent still proposed contract provisions for further bargaining with respect to wages at any time and reiterated the promise that it would increase its wage rates whenever the other mills with which it competed increased theirs.

This offer could and should have been accepted without prejudice to further bargaining as proposed by Respondent. It was rejected because the Union was by then bargaining for its own security to the exclusion of bargaining for the benefit of the employees, and the Union was afraid that any increase in earnings would lessen interest in the strike which the Union was trying to promote.

7 See footnote 6, p. 15.

was contemplated and frequently discussed," and Respondent, throughout the bargaining:

2. Reminded the Union that Respondent had always been among the first of the comparably situated mills to make any wage increase, and promised the Union that Respondent would increase its wage rates whenever and as soon as the other mills in the locality increased theirs (R. A. 165, 166, 170, 173); and

3. Offered to provide in the contract that the contract might be reopened for further bargaining with respect to wages at any time (R. A. 166, 170 and Sec. 2 of Art. II of Respondent's Exhibits 3, 4 and 2).

4. Respondent also proposed that a schedule of its then existing hourly and incentive wage rates be attached to and made a part of the contract; and, on November 7, 1945, Respondent offered to agree "that the rates and earnings, as shown by said schedule, will not be increased or reduced during the term of this contract unless as a general increase or reduction in wage rates is agreed upon in collective bargaining" (Respondent's Exhibit 2, Sec. 1. See also R. A. 174).

Respondent also acceded to the Union's insistence that disputes regarding work loads ("Point Standards") and work assignments under the incentive wage plan (which is to say, disputes as to the amount of work to be done for the agreed upon rate of pay) should be submitted to arbitration if not adjusted to the mutual satisfaction of both parties (Respondent's Exhibit 2, Sec. 3, next to the last page).

The parties did not have to, and did not, agree; but the situation complained of would not have arisen if the Union,

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8 The concentration of the textile industry in the South is such that wage adjustments, once started, spread through the industry with great rapidity.

instead of terminating the bargaining, had accepted the contract which Respondent proposed. Instead, the Union rejected the amended wage proposals contained in Respondent's Exhibit 2 without reading them (R. A. 176) and terminated the bargaining negotiations as above set forth.

This, then, was the situation with respect to wages which existed when the Union terminated the bargaining negotiations:

a) The Union had repeatedly proposed, and Respondent had just as repeatedly explained and justified its unwillingness to then grant a general wage increase of 5¢ per hour (R. A. 165-166, 169, 170, 172-173, 188);

b) Respondent had bargained with the Union in good faith with respect to the incentive wage plan, objections to which had admittedly caused the employees to affiliate with the Union (R. 60, 61-62, infra, pp. 54 to 55) (R. A. 172);

c) Respondent had offered to contract that the wage rates then in effect would not be increased or decreased unless and until a general adjustment in wage rates was agreed upon in collective bargaining (Respondent's Exhibit 2, Sec. 1);

d) Respondent had also offered to include in the contract provisions whereby the contract could be reopened for further bargaining with respect to wages at any time (Sec. 2 of Art. II of Respondent's Exhibits 3, 4 and 2; R. A. 166, 170); and

e) Respondent had repeatedly promised the Union that Respondent would maintain its position of paying wage rates a bit higher than those paid by the other Mills in the locality and would increase its wage rates whenever and

as soon as the other Mills increased theirs (R. A. 165, 166, 170, 173).

No impasse existed and the situation complained of would not have arisen if the Union, instead of breaking off and terminating the bargaining negotiations, had accepted the proposals which Respondent made.

All That Respondent Thereafter Did Was What It Had Repeatedly Informed, Promised and Assured the Union That It Would Do.

We submit that the facts surrounding the making of the complained of wage increase are merely collateral to the questions at issue; but they should be stated.

A general wage increase of 5¢ per hour spread throughout the textile industry in the Southern States during the last week in December 1945 (R. A. 181, 187-188).[9]

While the probability of such a wage increase had been anticipated during the bargaining negotiations, neither Respondent nor apparently the Union had anticipated that it would come so quickly. Respondent first learned that the other Mills with which it competed for labor were about to increase their wage rates on December 29 or 30, 1945. These facts were proven and were not contradicted (R. A. 187-188). If the Union, through its contacts with other Mills, had any advance notice of the wage increase, it did not impart the information to Respondent. The record is silent in this regard.

The textile industry is the principal industry in the closely-knit Griffin, Georgia, labor market area; the demand for then greatly exceeded the supply of qualified

9 See footnote 8, p. 17.

workers; and the competition for employes was keen (R. A. 181, 187-188).

In order to maintain its competitive and historical position of always paying wages rates somewhat higher than those paid by any of the other Mills, it was necessary that Respondent immediately make substantially the same increase as was being made by the other Mills in the locality (R. A. 181, 187-188). Respondent had always been among the first of the competing mills to make any wage increase, and desired to maintain that position (R. A. 165-166, 169, 170, 172-173, 181, 187-188).

Respondent had, throughout the bargaining, informed, promised and assured the Union, that Respondent would increase its wage rates as soon as the other Mills in the locality increased theirs (R. 165, 166, 170, 173).

Respondent did not conceive itself to be under any duty to, and Respondent therefore did not, request a resumption of the bargaining which the Union had terminated.

No resumption of said bargaining had been requested or suggested by the Union; nor had the Union in any way indicated any desire or intent to ever, in any event, resume the bargaining which it had terminated (supra, p. 11).

As a courtesy, nothing more nor less, Respondent sent for the President and other members of the Bargaining Committee of the Union who were available and informed them that the situation which had been anticipated during the bargaining had arisen and that Respondent, as it had repeatedly said that it would, was about to announce wage rate increases sufficient to maintain its long standing position of always paying wage rates a bit higher than the level of rates in the community, being approximately the increases which the Union had requested during the bargaining (R. A. 188-189).

Respondent also mailed detailed schedules of the wage increases which it was making to Mr. Douty, the Georgia State Director of the Union, and exhibited copies of said Schedules to the President and Members of the Bargaining Committee of the Union (R. A. 188-189, Board's Exhibit 12 A-F, B. A. 130-135).

The President and Members of the Bargaining Committee of the Union expressed approval of and appreciation for said wage increases (R. A. 188). No one, on behalf of the Union, then or thereafter requested or suggested any further bargaining.[10]

Summarizing This Fully Substantiated Statement of the Case, Respondent Submits:[11]

a) That the controlling facts are:

That the Union, without fault of respondent, terminated the collective bargaining, first on October 18, 1945, again, after resumption, on November 8, 1945, and again, this time finally and completely, without then or thereafter indicating any desire or intention of ever, under any cir-

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10 Respondent does not contend that it bargained with the Union on January 1, 1946, nor does Respondent raise, in this Court, any issue of fact as to whether notifying the Union that it was making substantially the wage increase which the Union had requested amounted to "consulting with the Union." Respondent does submit that, if the January 1, 1946, wage increase would have afforded any basis for closing the contract, it seems reasonable to assume that the Union would have requested a resumption of negotiations as soon as it learned of said wage increase. We submit also that, if the January 1, 1946, wage increase did not afford any basis for closing the contract, there was no conceivable need or purpose for Respondent to do anything more than inform the Union that it had, because of the increases being made throughout the industry, determined to make substantially the increase which the Union had requested before it terminated the bargaining. Attention is also directed to the fact that Respondent thereafter (infra, pp. 43 to 52) bargained with the Union with respect to two additional wage increases, and finally agreed with the Union upon a contract, but that the Union still refused to sign the contract.

11 The facts here stated all appear from the record now before the Court. The post-hearing facts alleged and relied upon as a further reason why the order should not now be enforced, are set forth in the argument of that contention (infra, pp. 43 to 52).

cumstances, resuming bargaining, on December 19, 1945; and that no further collective bargaining was pending, requested or anticipated when the complained of wage increase was made; and

b) **That the pertinent background and collateral facts are:**[12]

1) That Respondent bargained with the Union in complete good faith, in a sincere effort to agree with the Union upon a contract, and almost succeeded in its effort to persuade the Union to agree upon a contract;

2) That Respondent continued to bargain with the Union notwithstanding the threat of strike, resumed bargaining after the first two terminations thereof by the Union, and at all time demonstrated a willingness to bargain in good faith whenever requested to do so;

3) That Respondent bargained with the Union in good faith with respect to wages, and that the situation complained of would not have arisen if the Union, instead of terminating the bargaining, had accepted the proposals for further bargaining which Respondent made during the bargaining; and

c) That Respondent, in making said wage increase, simply did what it had, throughout the bargaining, informed,

12 Respondent verily believes that the record before the Court clearly shows that the parties failed to reach agreement in collective bargaining, and that the Union terminated the bargaining negotiations, solely because, from October 17, 1945 through December 19, 1945, the Union was bargaining for its own security and the collection of its own dues, to the complete exclusion of any bargaining for the benefit of the employees and to the complete exclusion of performance of its duties as the collective bargaining representative of the employees. See pages 11-16 of Respondent's brief in opposition to the petition for certiorari. See also the fact that when the parties, after the issuance of the order sought to be enforced, did finally reach agreement upon a contract, the Union refused to sign it for this and no other reason (infra, pp. 43 to 52).

This collateral fact is not here stated as a fact because some, but by no means all, of the testimony in that regard was contradicted; and we are here stating only the facts which were unquestionably established without contradiction or dispute.

promised and assured the Union that it would do, namely, increase its wage rates as soon as it learned that the other Mills in the locality were about to increase theirs.

None of these facts are mentioned in Petitioner's brief, nor did the Board make any findings, pro or con, with respect to any of them, although findings with respect to all of them were insisted upon by Respondent in its Exception to the Intermediate Report of the Trial Examiner (R. 34-54).

The Board did find (R. 60, 61-62, 110, infra, pp. 54 to 55) that Respondent violated the law in no other way than by making a general increase in its wage rates without consulting the Union; and we respectfully submit that the questions at issue should be controlled by the true facts pertinent thereto, and that, in the absence of findings to the contrary by the Board, the Court should, and of necessity must, look to the evidence for the facts; and that effect should be given to proof which is uncontradicted and corroborated.

"SPECIFICATION OF ERRORS TO BE URGED."

For the most part, the "errors" specified at pages 18-19 of Petitioner's brief were not committed. None of them are at all relevant to the facts or to the true issues in the case. They relate at best to unnecessary dicta in the opinion of the Circuit Court; and we submit that the judgment of the Circuit Court should not be reversed even though this Court feels that the obviously incorrect dicta in the opinion of the Circuit Court should be publicly disapproved.

1. The Circuit Court did not hold that a mere impasse in bargaining negotiations authorizes an employer to institute unilateral changes in rates of pay. The Circuit Court, on the facts of this case, correctly held that Respondent did not refuse to bargain with the Union by unilaterally increasing its wage rates after the Union had completely terminated the bargaining, "had withdrawn from further bargaining," and where no further bargaining was pending, requested or anticipated when the wage increase was granted. The Circuit Court simply held, in effect, that Respondent did not refuse to do what it was not requested or under any duty to do.

2. Nor did the Circuit Court hold that the taking of a strike vote authorizes an employer to effectuate unilateral changes in rates of pay. Respondent bargained with the Union in good faith after and notwithstanding the notice of intent to strike, and made substantial concessions from its previous bargaining insistencies in a further effort to reach agreement with the Union on a contract. The incidental reference to the strike vote in the opinion of the Circuit Court was not appropriate to the facts of the case or to the contentions of Respondent and was not necessary

to the judgment entered. The judgment of the Circuit Court should not be reversed even though this Court feels called upon to again say that neither a threat of strike nor a strike justifies a refusal by an employer to resume and continue collective bargaining whenever requested to do so.

3. Nor did the Circuit Court hold that anticipated wage increases by competitors in the labor market authorize an employer to effectuate unilateral changes in rates of pay. The Circuit Court, on the facts of this case, simply held that where collective bargaining has been terminated by the Union without fault of the employer, and no further bargaining is pending, requested or anticipated, an employer may unilaterally increase its wage rates so as to maintain its position in a highly competitive labor market.

4. Paragraph 4 is a mere generalization which does not merit comment.

5 and 6. Respondent did not contend, and the Court below did not hold, that the Board's order should not be enforced because it had already been complied with. Respondent expressly disclaimed any such contention.[13] Re-

[13] The following is quoted from pages 49-50 of Respondent's brief in the Circuit Court:

> "We do not rely, merely, upon the facts, although they are facts, that Respondent has fully complied with said order, and that said order has fully served its intended purposes and is now stale. (Same emphasis in Circuit Court brief.)
>
> "Our contention is that the Union, by its conduct after the hearings before the Trial Examiner and the issuance of said order, made it impossible for Respondent to comply with said order, and that, Respondent's efforts to bargain with the Union having been frustrated by the continued refusal of the Union to recognize and perform its agency responsibilities and bargain in good faith, Respondent has been relieved of any duty to bargain with the Union; and that the order sought to be enforced should not, for that reason, be enforced."

The incomplete quotation, at page 17 of Petitioner's brief in this Court, is needlessly misleading.

spondent contended and the Circuit Court held that the Board's order should not be enforced because it should not have been issued. Respondent also contended, as a further reason why the order should not be enforced, that the Union, by its conduct after the hearings before the Trial Examiner and the issuance of said order, made further compliance with said order unreasonable if not impossible, and Respondent requested appropriate opportunity to prove the facts alleged. Any reliance by the Circuit Court upon unproven allegations of facts was unrequested and obviously erroneous; but Respondent should not, on that account, be deprived of the prayed for opportunity to prove the facts alleged; nor should the obviously correct judgment be reversed because of obviously incorrect dicta in the opinion of the Court below.

7. Paragraph 7 is also a mere generalization which does not merit comment.

SUMMARY OF ARGUMENT.

Respondent takes issue with very little of the argument which is made in Petitioner's brief. Most of it, as abstract law, is entirely sound. The trouble is that it is not at all related to the true facts or to the true issues in his case.

Respondent does not contend that an employer may unilaterally increase its wage rates in disregard of requested or pending collective bargaining, or that a mere impasse in collective bargaining negotiations, or a threat of strike, or an actual strike, relieves an employer of the duty to resume and continue collective bargaining whenever requested to do so.

Nor does Respondent contend that anticipated or actual wage increases by competitors in the labor market authorize or justify a unilateral wage increase in disregard of pending or requested collective bargaining negotiations.

Nor does Respondent contend that enforcement of an order of the Board should be denied merely because the order has been fully complied with and has fully served its intended purposes.

Nor does Respondent contend that any Court should ever rely upon unproven allegations of fact, no matter how earnestly asserted.

Nor does Respondent take issue with the argument of Petitioner that the case should be remanded to the Board for findings as to the post-order facts alleged and relied upon by Respondent.

Respondent therefore takes issue with very little of the argument which is made in Petitioner's brief.

Respondent's argument, on the facts of this case, and the issues here involved, may be **summarized** as follows:

I.

The order sought to be enforced should not be enforced because it should not have been issued.

Respondent did not refuse to bargain by unilaterally increasing the wage rates of its employees on January 1, 1946, because:

The Union had, on December 19, 1945, completely and finally terminated all collective bargaining, without then or thereafter in any way indicating any desire or intention of ever resuming bargaining; and

No further collective bargaining was pending, requested or anticipated when said wage increase was made.

Bad faith cannot reasonably be inferred from the fact that Respondent did exactly what it had repeatedly informed, promised and assured the Union that it would do.

Respondent was not under any duty to request a resumption of the bargaining which the Union, without fault of Respondent, had completely and finally terminated.

There must be a request to bargain before there can be a refusal to bargain; and Respondent cannot be held to have refused to do what it was not requested or under any duty to do.

The judgment of the Circuit Court, denying enforcement of the order of the Board, should be affirmed, even though this Court feels that the obviously incorrect dicta in the opinion of the Circuit Court should be publicly disapproved.

II.

The order sought to be enforced, even if properly issued, should not now be enforced because the Union, by refusing to sign the contract which was agreed upon in collective bargaining after the issuance of said order, made further compliance with said order unreasonable if not impossible.

Respondent does not contend, and has not ever contended, that the order should not be enforced because it has been fully complied with and has fully served its intended purposes.

Respondent does contend that because the parties, after the hearings before the Trial Examiner and the issuance of said order, bargained to complete agreement on everything proposed or discussed except the issue as to whether the relationship of the employees to the Union should be voluntary or compulsory, and because the Union then refused to abide by the agreements made in bargaining and refused to sign the contract which was agreed upon, circumstances have arisen which affect the propriety of enforcement of said order, and said order should not now be enforced.

Respondent also contends that it should be afforded opportunity, somewhere, to prove the facts which it alleges. Respondent does not take issue with the argument of Petitioner (Petitioner's brief, pp. 48-53) that the case should be remanded to the Board for this purpose.

III.

The order, if enforced, should be modified.

Board orders should be remedial, and the remedy should not exceed the wrong.

An employer should not be enjoined from doing things which he has not done or given any indication of intending or of being apt to do; nor should he be ordered to do what he has willingly and in good faith done.

We do not refer, in this regard, to the facts which have occurred since the hearings before the Trial Examiner and the issuance of the order sought to be enforced.

The Board predicated its Decision and Order **solely** upon its affirmance of the Trial Examiner's finding that Respondent refused to bargain by increasing the wage rates of its employees without consulting the Union.

Respondent having violated the law, if at all, in no other way than by making a general increase in the wage rates of its employees without consulting the Union, this is the only wrong which needs to be, or which should be, remedied; and the order, if enforced, should be modified accordingly.

ARGUMENT.

I.

The Order Sought to Be Enforced Should Not Be Enforced Because It Should Not Have Been Issued.

Respondent Did Not Refuse to Bargain by Unilaterally Increasing the Wage Rates of Its Employees on January 1, 1946, After the Union, Without Fault of Respondent, Had Terminated the Bargaining, First on October 18, 1945, Again, After Resumption, on November 8, 1945, and Again, This Time Finally and Completely, Without Then or Thereafter Indicating Any Desire or Intention of Ever Resuming Bargaining, on December 19, 1945; and Where No Further Bargaining Was Pending, Requested or Anticipated When Said Wage Increase Was Made, and Respondent Had Resumed Bargaining, and Had Bargained in Good Faith, Whenever Requested to Do So, and the Situation Complained of Would Not Have Arisen if the Union, Instead of Terminating the Bargaining, Had Accepted the Proposals for Further Bargaining With Respect to Wages Which Respondent Had Submitted to It.

The controlling facts are that the complained of wage increase was made on January 1, 1946, after the Union, without fault of Respondent, had completely and finally terminated the bargaining on December 19, 1945; that the Union did not, on December 19, 1945 or thereafter, request any resumption of, or in any way indicate any desire or intention to ever resume, the bargaining which it had terminated; and that no further bargaining was pending, requested or anticipated when said wage increase was made.

All other of the facts stated are background or collateral thereto.

The controlling facts, above stated, although not mentioned by Petitioner, were fully established by the uncontradicted testimony of Respondent's witnesses and were corroborated by the testimony of the Board's principal witness. Mr. Douty, the Georgia Director of the Union, himself testified (infra, pp. 10-11) that no further bargaining was contemplated when the Union terminated the bargaining on December 19, 1945; and Petitioner does not contend, nor has the Union or the Board ever contended, that any resumption of bargaining was requested, or that any desire or intention to ever resume bargaining was in any way indicated by the Union, after the Union terminated the bargaining, for the third time, on December 19, 1945.

The controlling rules of law have been clearly and correctly established by this Court.

N. L. R. B. v. Columbia Enameling & Stamping Co., Inc., 306 U. S. 292, 297, 83 Law Ed. 660, 664:

> "Since there must be at least two parties to a bargain and to any negotiations for a bargain, it follows that there can be no breach of the statutory duty by the employer—when he has not refused to receive communications from his employees—without some indication given to him by them or their representatives of their desire or willingness to bargain. In the normal course of transactions between them, willingness of the employees is evidenced by their request, invitation, or expressed desire to bargain, communicated to their employer.
>
> **"However desirable may be the exhibition by the employer of a tolerant and conciliatory spirit in the settlement of labor disputes, we think it plain that the**

statute does not compel him to seek out his employees or request their participation in negotiations for purposes of collective bargaining. * * * To put the employer in default here the employees must at least have signified to respondent their desire to negotiate. Measured by this test the Board's conclusion that respondent refused to bargain with the Union is without support, for the reason that there is no evidence that the Union gave to the employer . . ., any indication of its willingness to bargain . . . **The employer cannot, under the statute, be charged with refusal of that which is not proffered.**" (Emphasis added.)

N. L. R. B. v. Sands Mfg. Co., 306 U. S. 332, 343-344, 83 Law. Ed. 682, 689-690:[14]

"When the representatives of the two parties separated on August 21, no further negotiations were pending, each had rejected the other's proposals, and there were no arrangements for a further meeting. On the following days the factory was closed.

"The Board finds that, in this situation, the respondent was under an obligation to send for the shop committee, and again to reason with its members or to wait until the situation became such that it could operate its whole plant without antagonizing the employees' views with respect to departmental seniority. We think it was under no obligation to do any of these things. There is no suggestion that there was a refusal to bargain on August 21st. **There could be, therefore, no duty on either side to enter into further negotiations for collective bargaining in the absence of a request therefor by the employees.**" (Emphasis added.)

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14 See also, N. L. R. B. v. Whittier Mills, 123 Fed. 2nd 725; Great Southern Trucking Co. v. N. L. R. B., 127 Fed. 2nd 189 (1), 185; Reliance Mfg. Co. v. N. L. R. B., 125 Fed. 2nd 311, 315; N. L. R. B. v. West Kentucky Coal Co., 152 Fed. 2nd 198 (2).

Respondent therefore submits that there must be a request to bargain before there can be a refusal to bargain; and that

Respondent was not under any duty to request a resumption of the bargaining which the Union had completely and finally terminated; and that

Respondent cannot be held to have refused to do what it was not requested or under any duty to do.

Petitioner's brief ignores the facts that the Union completely and finally terminated the bargaining before the wage increase was made, and that no further bargaining was pending, requested or anticipated, when the wage increase was made. Petitioner's brief therefore does not meet the issue in the case.

Respondent does not contend that an employer may unilaterally increase its wage rates in disregard of pending or requested bargaining negotiations; and cases such as **May Department Stores Co. v. N. L. R. B., 326 U. S. 376**, and **Matter of Craddock-Terry Shoe Corporation, 73 N. L. R. B. 1339, 1342**, cited by Petitioner, are not at all relevant to the question here at issue.

In the **May Department Stores case**, the unilateral wage increase was simply a part of a pervading refusal to recognize the Union, and an unauthorized refusal to bargain with a Union which was diligently asserting and trying to exercise its bargaining authority. The Union, in that case, had been and was doing everything which it could do to bring about contract negotiations. The best that can be said of the Company, in that case, is that it was refusing to bargain because it erroneously disputed the Board's determination of the appropriate unit. In truth, the total circumstances clearly indicated a pervading refusal to respect the right of the employees to organize as provided by the National Labor Relations Act.

Here, Respondent had fully recognized the bargaining authority of the Union; had counter-proposed a complete contract; had earnestly endeavored to agree with the Union upon a contract; "the Union had withdrawn from further bargaining"; and no further bargaining was pending, requested or anticipated when the wage increase was made. The two cases are therefore entirely different.

In the **Craddock-Terry Shoe Corporation case** the Board found that "no impasse in bargaining had been reached" when the unilateral wage increase was announced. Actually, wage negotiations initiated by the Union had merely been postponed at the request of the Company to afford the Company an opportunity to study a War Labor Board Directive upon which the Union's wage proposals were based; and it was in this situation, so the Board found, that the Company, "motivated by a desire to undermine the C. I. O. as the employees' representative," unilaterally made the wage increase which the Union had proposed and which the Company had requested time to consider. There is no similarity between the cited case and the case now before the Court. In the cited case further collective bargaining was pending and requested when the wage increase was made. In the case now before the Court the bargaining had been terminated by the Union, without fault of Respondent, and no further bargaining was pending, requested or anticipated when the wage increase was made.

Nor does Respondent contend that a mere impasse in bargaining negotiations relieves an employer of the duty to resume and continue collective bargaining negotiations whenever requested to do so; and the cited case of **Jeffrey-DeWitt Insulator Co. v. N. L. R. B., 91 Fed. 2d 134**, is not at all in point. Respondent here twice did exactly what the employer in the cited case wrongfully refused to do.

In the cited case the Company refused an express request to bargain. The refusal to bargain was admitted. The Company attempted to justify its action on the ground that an impasse in bargaining had occurred about a month earlier. The following is quoted from the decision in the cited case at page 136: "In asking that the order be set aside, the Company makes three contentions: . . . (2) that the Company was not guilty of an unfair labor practice in refusing to negotiate further after an impasse had been reached in negotiations. . . ."

The cited case would have been applicable if Respondent had refused to resume bargaining negotiations on November 7 or December 19, because of the terminations of bargaining which occurred on October 18 and November 8; but the undisputed, completely distinguishing facts are: (1) that Respondent, upon request, resumed bargaining and bargained in good faith on November 7 and 8 and December 19, 1945 and (2) that no resumption of bargaining was requested, and that no desire or intention of the Union to resume bargaining was in any way indicated, after the Union finally terminated the bargaining on December 19, 1945.

Respondent does not contend, and has not ever contended, that a threat of strike, or an actual strike, relieves an employer of the duty to resume and continue collective bargaining negotiations whenever requested to do so. On the contrary, the Union gave notice of its intention to strike on October 18 and 22, 1945 (the strike did not actually commence until after the hearings before the Trial Examiner had been completed), and Respondent, upon request, resumed and continued bargaining on November 7 and 8 and December 19, 1945; and, in a further effort to reach agreement with the Union, made substantial concessions which it was reluctant, and had previously declined, to make. Respondent therefore submits

that such cases as **N. L. R. B. v. Mackey Radio & Telegraph Co., 304 U. S. 333**, and **N. L. R. B. v. Reed & Prince Mfg. Co., 118 Fed. 2nd 874**, are not at all pertinent to the merits of this case; and that the judgment of the Circuit Court, denying enforcement of the Board's Order, should be affirmed even though the dicta in the opinion of the Circuit Court is disapproved.

Nor does Respondent contend that a Union, in the face of an adamant and continuous refusal to bargain, must continually renew the request to bargain which it has made and which is still pending; and the case of **Ritzwoller Co. v. N. L. R. B., 114 Fed. 2nd 432, 436**, cited by Petitioner, is not relevant to any issue now before the Court.

In the **Ritzwoller case** the employer tenaciously avoided all efforts of the Union to commence negotiations upon the contract which the Union had proposed, and a strike was called. The employer was informed that the strike would be called off if the employer would recognize the Union and commence bargaining negotiations. The employer replied that it had nothing to discuss with the Union at that time. The employer had the Union's proposal, to which it had made no reply, and the Court merely held that it was not incumbent upon the Union, in this situation, to continually renew the proposal.

The situation here was almost diametrically different. Respondent submitted a complete counter proposal to the Union at the first bargaining conference and collective bargaining continued with more than usual success until the Union abruptly terminated the bargaining negotiations. Respondent was earnestly trying to reach agreement with the Union upon a contract and proposed that the contract be closed with provisions for further collective bargaining with respect to wages in the event of a change in the then

prevailing economic situation. Two cases could hardly have less in common.

Nor does Respondent contend that anticipated or actual wage increases by competitors in the labor market authorize or justify a unilateral wage increase in disregard of pending or requested collective bargaining.

The point here is that no further bargaining was pending, requested or anticipated when the complained-of wage increase was made.

Respondent has stated the facts surrounding the making of the wage increase, as collateral to the controlling facts, merely because the Board, while predicating its affirmance of the Trial Examiner's findings **solely** upon the ground that Respondent refused to bargain by granting a wage increase to its employees without consulting the Union (R. 60, infra, p. 54), tossed in an inference that Respondent did not bargain in good faith with respect to wages prior to the Union's termination of the bargaining.

While the possibility of an industry-made wage increase was contemplated during the bargaining, neither party had any inkling that it would come so quickly. The testimony that Respondent first learned of the increase on Friday or Saturday preceding the Monday (New Year's Day) on which Respondent announced the increase, was undisputed. The record is silent as to whether the Union, through its contacts with other mills, had any advance notice of the increase. If it did it did not impart the information to Respondent; nor did it request further bargaining, although it had been repeatedly assured that Respondent would increase its wage rates as soon as it learned that the other mills were about to increase theirs.

Between the termination of the bargaining and the granting of the wage increase, the economic situation totally

changed. There was no reason during the bargaining, from August 31, 1945, through December 19, 1945, why Respondent should increase its wage rates, which were already higher than the rates being paid by the other mills with which it competed for labor. There was every reason why Respondent should, as it did do, maintain its historical position of always being among the first of the comparable mills to grant any wage increase, and its competitive position of paying wage rates somewhat above the rates paid by its competitors in the labor market.[15]

Not only did the economic situation change, but we respectfully submit that bad faith cannot reasonably be inferred from the fact that Respondent did exactly what it had repeatedly informed, promised and assured the Union that it would do.

Throughout the bargaining, Respondent repeatedly explained and justified its refusal to grant the wage increase which the Union was requesting, by demonstrating to the Union that the wage rates which it was then paying were higher than the rates then being paid by the other comparable mills, and were higher, in fact, than the rates which the War Labor Board was then permitting comparable mills to pay. The duty to bargain does not include any duty to agree; and a fully justified and carefully explained refusal to grant a wage increase cannot be called a refusal to bargain.

Respondent, throughout the bargaining, also repeatedly informed, promised and assured the Union that it would maintain its historical position of always being among the first of the comparable mills to increase wages and its competitive position of paying rates somewhat higher than the rates paid by its competitors, and that it would increase its wage rates just as soon as it learned that the

[15] N. L. R. B. v. Whittier Mills, 123 F. 2nd 725.

Mills with which it competed for labor were about to increase theirs.

This is exactly what, and all that, Respondent did; and we confidently say that the fact that Respondent did exactly what it said that it was going to do, does not indicate bad faith, either in doing it or in saying that it was going to do it.

Respondent, moreover, offered to provide in the contract being negotiated: (a) that the matter of wages might be made the subject of further collective bargaining at any time; and (b) that its wage rates would not be increased or reduced unless and until a general adjustment of wage rates was agreed upon in collective bargaining between Respondent and the Union.

We say also that Respondent cannot reasonably be charged with bad faith because the Union rejected the counter-proposals which Respondent submitted to it; especially not, where the situation complained of would not have arisen if the Union, instead of terminating the bargaining, had accepted Respondent's counter-proposals.

Petitioner's brief cites a mass of cases, but the controlling case of **N. L. R. B. v. Columbia Enameling & Stamping Co.**, supra, page 32, is mentioned in a footnote only. Petitioner's brief does not at all meet the question at issue.

We have not ever contended that Respondent bargained with the Union on January 1, 1946; and we do not here insist upon the contention that Respondent "consulted with the Union" by informing the Union that, the situation anticipated during the bargaining having occurred, Respondent was going to do exactly what it had, throughout the bargaining, informed, promised and assured the Union that it would do; namely, increase its wage rates

(in an amount substantially equal to the increase requested by the Union) so as to maintain its historical position of always being among the first of the comparable mills to grant any wage increase, and its competitive position of paying wage rates somewhat higher than the rates paid by the other mills in the locality.

The Board found that this did not amount to consulting with the Union; and we assume that the Court will deem itself bound by this finding even though it should feel inclined to disagree with it.

We do insist that the Board was not justified in inferring bad faith from the fact that Respondent did what it always said that it would do.

We do also, parenthetically, call attention to footnote 10, at page 21 hereof; and we direct attention to the fact (alleged but not yet proven) that when Respondent did bargain with the Union regarding the wage increases which were made on March 13, 1946 and July 30, 1946 (infra pp. 44 and 49), no ultimate good was accomplished. The Union, although it approved the wage increases, still refused to sign the contract which was agreed upon (infra p. 49).

Our contention, on the record now before the Court, is that when the Union terminated the collective bargaining on December 19, 1945, "withdrew from further bargaining" (R. 125), it reassumed the obligation to initiate further bargaining if further bargaining was desired; and that it was not up to Respondent to request a resumption of the bargaining which the Union had elected to terminate.

The issue is a narrow one and we do not want to be misunderstood. As long as collective bargaining was pending, Respondent could not, and did not, act unilaterally.

We do not contend that the Union, by terminating the bargaining, forfeited its bargaining authority. If the Union, after terminating the bargaining on December 19, 1945, had requested that bargaining be resumed, Respondent would have been obligated to resume bargaining. When a resumption of bargaining was requested (by the Conciliator) on November 7, 1945, after the Union had terminated the bargaining on October 18, 1945, Respondent did resume bargaining and, on November 7 and 8, 1945 made substantial concessions which it did not want to make but which it did make because it did want to reach agreement on a contract, and because it recognized its duty, under the Statute, to bargain in good faith whenever requested to do so.

The Union again terminated the bargaining on November 8, 1945 and Respondent, upon request, again resumed bargaining on December 19, 1945.

The Union again terminated the bargaining on December 19, 1945. Mr. Douty, the Georgia Director of the Union, testified that no further bargaining was then contemplated; and no one contends, or has ever contended, that the Union, at any time thereafter, ever requested that the bargaining be resumed or in any way indicated any desire or intention of ever resuming the bargaining which it had elected to terminate.

We submit, therefore:

a) That no collective bargaining was pending, requested or anticipated when the wage rates were increased on January 1, 1946;

b) That it was not up to Respondent to request a resumption of the collective bargaining which the Union had terminated;

c) That Respondent cannot be held to have refused to do what it was not requested or under any duty to do;

d) That the order sought to be enforced should not be enforced because it should not have been issued; and

e) That the judgment of the Circuit Court should be affirmed even though the dicta in its opinion is disapproved.

This is the primary question at issue. The other questions hereinafter discussed are subsidiary thereto and, so far as concerns the proper disposition of the case, need not be considered if the foregoing primary question is determined according to our contentions.

II.

Circumstances Have Arisen Which Affect the Propriety of Enforcement of the Order Sought to Be Enforced.

The Union, by Refusing to Sign the Contract Which Was Thereafter Agreed Upon in Collective Bargaining, Made Further Compliance With Said Order Unreasonable if Not Impossible.

Respondent Should Be Afforded Leave to Prove the Facts Alleged.

The applicable rule of law was clearly established by this Court in **N. L. R. B. v. Jones & Laughlin, 321 U. S. 416, 428, 91 L. Ed. 1578 (8) 1582,**

> "When circumstances do arise after the Board's Order has been issued which may affect the propriety of enforcement of the order, the reviewing Court has discretion to decide the matter itself or to remand it to the Board for further consideration."

The only question is as to whether the facts which we have sought, and still seek, leave to prove, come within the above quoted rule.

We did not ask the Circuit Court to rely upon our mere assertion of facts. Nor did we, nor do we, contend that enforcement of the order should be denied merely because the order has been fully complied with, has fully served its intended purpose, and is now stale.[16] We did and do contend that the Board's Order, even if properly issued, should not now be enforced because the Union, after the hearings before the Trial Examiner and the issuance of said order, so completely frustrated Respondent's repeated and earnest efforts to bargain with the Union that Respondent should not now be ordered to bargain with the Union; and we did and do contend that some Court should, somewhere, afford us opportunity to prove the pertinent facts.

Reference is made to Paragraph 5 (R. 121) and to the prayer (R. 121) of our response to the Board's petition for enforcement. The following, in more detailed statement, are the facts upon which we rely and which we ask leave to prove.

1.

The complained of wage increase was made on January 1, 1946. The hearings before the Trial Examiner were held on February 20 and 21, 1946 (R. 70); the Intermediate Report of the Trial Examiner was issued on March 25, 1946 (R. 104); the long threatened strike started on April 18, 1946 (infra, paragraph 3), the Board issues its Decision and Order on August 21, 1946 (R. 64); and the strike was abandoned by the employees on August 26, 1946 (infra, paragraph 10). The petition for enforce-

[16] See note 13, p. 25.

ment of the Board's order was filed more than a year later, on December 8, 1947 (R. 1).

2.

During the early part of March, 1946, another general wage increase spread throughout the textile industry. Respondent, still desiring to maintain its position of paying wage rates somewhat higher than the rates paid by the other mills with which it competes for labor, and desiring also to avoid the trouble and expense of further, unwarranted, unfair labor practice charges, requested a conference with the Union and proposed wage rate increases which averaged 6¢ per hour per employee. The requested conferences were held on March 12 and 13, 1946, and it was agreed that the increases proposed by Respondent should be made effective as of March 11, 1946, the first day of the work week. No contract negotiations occurred at these conferences.

3.

Employee members of the Union Bargaining Committee thereafter expressed a desire to resume negotiations for a contract without provisions for the security of the Union or the check-off of the Union's dues, and bargaining conferences were convened and held on April 16 and 17, 1946. Respondent offered to contractually obligate itself for a Christmas Bonus in addition to the paid vacations which it had previously proposed, and tentative agreement was reached at these conferences, on the matters of Vacations and Christmas Bonus (Article V, Respondent's Exhibit 4) and Union Solicitation On Company Time (Section 3 of Article VIII, Respondent's Exhibit 4). It looked as though the parties were on the way to a contract. However, at the conference on April 17, 1946, Mr. Douty, the International Union representative, contrary to the an-

nounced desire of the employee members of the Bargaining Committee, renewed the Union's demands for compulsory Union membership and the check-off of dues, and again stated that the International Union would not permit the signing of any contract which did not include adequate provisions for the security of the Union and the check-off of its dues. The April 17 conference was devoted, almost entirely, to a repetition of the discussion of these issues, and no further progress was made. Respondent urged the Union to continue negotiations with respect to the other provisions of the contract which had not been agreed upon, but the Union broke off and terminated the negotiations and the long-threatened strike was called by the Union and started the next day, April 18, 1946.

4.

A conference, in an effort to settle the strike, was convened by, and held in the offices of, the Conciliation Service of the United States Department of Labor, in Atlanta, Georgia, on May 30, 1946. Argument with respect to Union security and check-off consumed the entire conference, and no agreements were reached.

5.

The conference last referred to was adjourned to reconvene on June 1, 1946, with the express understanding that the discussions would be confined to contract provisions with respect to the controverted incentive wage plan and work loads and work assignments under said plan. Respondent prepared amendments to its work load and work assignment proposals, and representatives of Respondent and the employee members of the Union Bargaining Committee met, in the offices of the Conciliation Service, at the appointed time. After waiting several

hours, those present were informed by telephone that Mr. Douty, the International Union representative, would not be able to attend the conference. It was agreed that negotiations in Mr. Douty's absence would be useless, and the conference dispersed.

6.

Further negotiations were held in the Conciliation Service offices in Atlanta on July 2 and 3, 1946. At the opening of these conferences, Respondent submitted to the Union the amendment to its proposals with respect to the incentive wage plan and work loads and work assignments under said plan which it had prepared for submission at the conference on June 1, 1946. The conferences on July 2 and 3, 1946, were, for several hours, devoted to a thorough discussion of these issues (the first such dscussion which the parties had ever had); and, after an almost complete re-writing of Respondent's proposals, tentative agreements were reached with respect to these provisions of the contract. Mutually acceptable modifications were also made in all other provisions of the contract which Respondent had proposed, and the entire contract, as modified, amended and re-written during the bargaining negotiations, was tentatively agreed to. The International Union representative thereupon again insisted upon including in the contract provisions for the security of the Union and the check-off of its dues; and, when Respondent refused to compel employees to become or remain members of the Union, or pay dues to the Union, the Union broke off the negotiations and the conference was adjourned.

7.

Another general wage increase spread throughout the cotton textile industry during the latter part of July, 1946.

In the hope that a further negotiated wage increase would induce the Union to terminate the strike and sign the contract which had been tentatively agreed upon, a further bargaining conference was requested by Respondent and was held in the Conciliation Service offices in Atlanta on July 30, 1946.

8.

Respondent opened the conference on July 30, 1946, by offering to increase all hourly wage rates 8¢ per hour and to increase all incentive rates so that earnings under the incentive wage plan, at somewhat less than the average rate of production then prevailing in the mill, would be increased 8¢ per hour.

9.

In response to the above proposal, Mr. Douty, the International Union representative, stated that the Union was settling its then current wage demands with other mills for an increase of 8¢ per hour, and that the wage increase proposed by Respondent was in line with the increases which were being agreed upon with and made by other mills. He thereupon inquired whether there had been any change in Respondent's attitude toward Union security and the check-off of the Union's dues. Upon being informed that Respondent was of the same opinion still, Mr. Douty requested a recess for a discussion between him and the employee members of the Committee. After the recess, which lasted forty minutes, Mr. Douty, informed Respondent that, without adequate Union security and dues deduction provisions, it would be impossible to agree upon a contract. Employee members of the Union Bargaining Committee asked Mr. Douty, in the presence of Respondent's representatives, whether the Local Union might not be permitted to sign a contract without

Union security and check-off provisions, and Mr. Douty replied that it would not be. The conference thereupon adjourned without any agreement having been made with respect to the wage increase which Respondent had proposed.

Approximately one-half of the employees (many of whom had refused to strike) were already back at work, and the wage increases proposed by Respondent were made effective as of the first day of that workweek.

10.

On August 21, 1946, the Board issued its decision that Respondent had bargained with the Union in good faith with respect to the incentive wage plan and had only committed an unfair labor practice by increasing its wage rates without consulting the Union. The strike was completely abandoned, and all employees returned to work, on August 26, 1946. Respondent is informed and believes, and alleges that the employees abandoned the strike because they finally realized that they were striking for the security of the Union and the deduction of the Union's dues from their wages, and not for any purpose of benefit to them.

11.

Most of the employee members of the Union Bargaining Committee resigned. The Union elected, or appointed, a new Bargaining Committee, and a further bargaining conference was convened and held on September 19, 1946.

12.

Respondent submitted to the conference, held on September 19, 1946, a complete draft of the contract which had been tentatively agreed upon in prior bargaining ne-

gotiations, and Respondent offered to sign, and urged the Union to sign, this contract. A copy of the index to this contract is set forth in the Appendix to Respondent's Brief in the Circuit Court (R. A. 191), and Respondent offers to introduce said entire contract in evidence when and if afforded an opportunity to do so.

13.

The Union refused to sign the contract which had been tentatively agreed upon, and renewed its demands for the inclusion in the contract of provisions to compel the employees to continue membership in the Union and to provide for the check-off of the Union's dues. The Union again stated that it would not sign, or permit the signing of, any contract which did not include any such provisions. Respondent again refused to compel employees to become or remain members of the Union or to pay dues to the Union, and the Union again broke off and terminated the bargaining negotiations.

14.

When the bargaining first started, back on August 31, 1945, it was mutually agreed that all bargaining agreements would be tentative and not binding unless and until a complete contract was agreed upon. When the Union, on September 19, 1946, refused to sign the contract which had been tentatively agreed upon, all tentative bargaining agreements were mutually withdrawn, it then being obvious to all concerned that further bargaining negotiations would be useless.

These are the facts which we allege and pray for opportunity to prove. Although our response to the Board's petition for enforcement was verified (R. 119, 122) and has never been denied, we did not ask the Circuit Court,

and we do not ask this Court, to rely upon our verified allegations without further proof. We do not take issue with the argument of Petitioner that the case should be remanded to the Board for the purpose of taking the proffered proof and making findings with respect thereto. We do say that circumstances have arisen on account of which the order should not now be enforced, and we do pray for opportunity to prove the facts alleged.

The bargaining authority of the Union was certified on August 13, 1945, more than three and one-half years ago. The complained of wage increase was made on January 1, 1946, a little more than three years ago. Collective bargaining negotiations, with interruptions for which the Union alone was responsible, extended over a period of more than a year.

The parties reached agreement, through collective bargaining, on every part of the contract being negotiated for as to which any possibility of agreement existed—on everything which had been proposed or discussed, except compulsory membership in and payment of dues to the Union.

Agreement was reached with respect to rates of pay and wages (including the administration of the incentive wage plan), hours of work and all conditions of employment pertinent to the relationship between the employer and the employee (R. A. 191).

The only disagreement was as to whether the relationship of the employees to the Union should be voluntary or compulsory. The Union, anticipating that the employees would not maintain membership in and pay dues to the Union unless compelled to, insisted that Respondent agree to discharge any employee who failed or refused to maintain membership in or pay dues to the Union. Re-

spondent refused to do so. Bargaining on this issue had extended over a period of more than a year, and it was obvious that no possibility of agreement existed.

Agreement having been reached on everything else which had been proposed and discussed, Respondent put into final form, and offered to sign, and urged the Union to sign, the contract which had been agreed upon (R. A. 191). The Union refused to sign the contract. The results of more than a year of collective bargaining were thereby nullified, and it was mutually acknowledged that further bargaining would be useless.

We do not rely upon the fact that Respondent has fully complied with the order, and we do not take issue with such cases as **N. L. R. B. v. Pennsylvania Greyhound Lines, 303 U. S. 261, 271**, and the other cases cited at pages 44-48 of Petitioner's brief.

We rely upon the decision of this Court in **N. L. R. B. v. Jones and Laughlin, 331 U. S. 416, 428, 91 Law. Ed. 1575 (8) 1582**, "When circumstances do arise after the Board's order has been issued which may affect the propriety of enforcement of the order, the reviewing Court has discretion to decide the matter itself or to remand it to the Board for further consideration."

And upon the fact that the Union, by refusing to sign the contract which was agreed upon in collective bargaining after the hearings before the Trial Examiner and the issuance of the order sought to be enforced, made further compliance with said order unreasonable, if not impossible, and that Respondent should not be ordered to again do a useless thing.

And we ask leave to prove the facts alleged.

III.

The Order, if Enforced, Should Be Modified so as to Restrict It to the Only Unfair Labor Practice Found to Have Been Committed, Namely, Making a General Wage Increase Without Consulting the Union.

Board orders should be remedial and the remedy should not exceed the wrong. An employer should not be enjoined from doing things which he has not done or given any indication of intending or of being apt to do; nor should he be ordered to do what he has willingly and in good faith done.[17]

The law in this regard has been clearly established by the decisions of this Court in **N. L. R. B. v. Express Publishing Co., 312 U. S. 426, 85 L. Ed. 930**; and **May Department Stores v. N. L. R. B., 326 U. S. 376, 90 L. Ed. 145**; and any further citations would merely add to the length of this brief, which is already longer than we would like for it to be.

The Trial Examiner purported to find:

(a) That Respondent did not bargain with the Union in good faith with respect to the incentive wage plan; (b) that Respondent interfered with, restrained and coerced its employees in violation of Section 8(1) of the National Labor Relations Act; and (c) that Respondent refused to bargain with the Union, in violation of Section 8(5) of said Act, by increasing its wage rates on January 1, 1946, without consulting the Union.

The Board found:

(a) That Respondent bargained with the Union in complete good faith with respect to the controverted incentive

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[17] We do not rely in this regard upon the post-order facts alleged in the preceding section of this brief. The argument here made is predicated on the record now before the Court.

wage plan (R. 61-62), and (b) that Respondent did not interfere with, restrain or coerce its employees in violation of Section 8(1) of said Act (R. 62 and 110).

The Board predicated its decision and order **solely** upon its affirmance of the Trial Examiner's finding that Respondent refused to bargain, in violation of Section 8(5) of said Act, by increasing the wage rates of its employees on January 1, 1946, without consulting the Union (R. 60, 61-62).

The following portions of the decision of the Board are quoted in substantiation of the statements just made, to-wit:

> (R. 60) "1. The Trial Examiner found that the respondent, in violation of Section 8(1) and (5) of the act, failed to bargain collectively with the Union as the statutory representative of the respondent's employees by refusing to furnish the Union with certain detailed information relating to the incentive wage plan and by granting a wage increase to its employees without consulting the Union. **Although we agree with the Trial Examiner's conclusion, we, however, rest our determination solely on the latter ground.**" (Emphasis added.)
>
> (R. 61-62) "With respect to the respondent's refusal to comply with the Union's request for certain information concerning its Point Plan (incentive wage plan), we, unlike the Trial Examiner, are not persuaded that, on the facts of this case, the respondent thereby manifested bad faith. In view of the respondent's invitation to the Union to conduct its own engineering studies at the plant, and under all the circumstances of this particular case, including the evidence of substantial counter-proposals on many other issues,

we find that this part of the respondent's conduct was not violative of Section 8(5) of the Act. The effect of such conduct in a different context is not before us for decision here."

The Board also found that there was no basis for the customary, almost automatic, 8(1) charges of interference; and there has not been, nor could there be, any intimation of any attempt to discredit or destroy the Union, or of any resentment of or opposition to the decision of the employes to organize for the purposes of, and engage in, collective bargaining.

(R. 110) "It Is Further Ordered that the Complaint, insofar as it alleges that the respondent, by vilifying, disparaging, and expressing disapproval of the Union, has interfered with, restrained, and coerced its employees, within the meaning of Section 8(1) of the Act, be, and it hereby is, dismissed."

The Board did, of course, hold that the so-called unilateral wage increase technically violated Section 8 (1) as well as Section 8 (5) of the Act. In **N. L. R. B. v. Express Publishing Co.**, supra, this Court, p. 433, said:

"But we think it does not follow that, because the act of respondent which the Board has found to be an unfair labor practice defined by Section 8 (5) is also a technical violation of Section 8 (1), the Board, in the circumstances of this case, is justified in making a blanket order restraining the employer from committing any act in violation of the statute, however unrelated it may be to those charged and found, or that courts are required for the indefinite future to give effect in contempt proceedings to an order of such breadth."

The Trial Examiner said in his Intermediate Report (R. 99):

> . . . the undersigned is not convinced upon the evidence that danger of the commission of other unfair labor practices is to be anticipated from the respondent's conduct in the past sufficient to justify a recommendation that the respondent be required to cease and desist from the commission of any other unfair labor practices. . . ."

Respondent violated the law, if at all, in no other way than by making a general increase in the wage rates of its employees without consulting the Union. This, therefore, is the only wrong which needs to be, or which should be, remedied.

The Record, particularly Respondent's Exhibits 3, 4 and 2, shows without contradiction or possibility of doubt that Respondent bargained with the Union in a most sincere effort to agree upon a contract.

The parties did not agree (until after the hearings before the Trial Examiner, see Part II, pages 43 to 52, hereof) upon contract provisions with respect to the incentive wage plan; but the Record shows, without dispute, that the Union rejected Respondent's amended proposal (Respondent's Exhibit 2) without reading it; and the Board found that Respondent bargained in good faith in this regard (R. 61-62). The failure to reach agreement with respect to Article II of Respondent's Exhibits 3 and 4 is therefore not chargeable to Respondent.

With this in mind, an examination of Respondent's Exhibits 3 and 4 will, we are confident, convince the Court that Respondent not only bargained in good faith, but almost succeeded in persuading the Union to make a contract.

When the Union terminated the bargaining for the first time, on October 18, 1945, the parties had already reached

agreement on 33 of the 39 sections and sub-sections of the proposed contract. Without lengthening this brief by a complete enumeration, these agreements covered such matters as: the recognition and exclusive bargaining authority of the Union; the rights and duties of the employees under the contract; reporting time pay; hours of work and premium pay for daily or weekly overtime or for work performed on the sixth or seventh consecutive day in a workweek; holidays and premium pay for holiday work; seniority, in all of its details; the procedure for adjusting grievances, including final arbitration if necessary;[18] strikes and lockouts; use of company bulletin boards by the Union; and for further bargaining at the expiration of the contract. (See Respondent's Exhibit 4.)

In reaching these agreements, Respondent assented to more than fifty separate changes in the contract which it had proposed (see interlineations, erasures and attached riders, Respondent's Exhibits 3 and 4); and thereby demonstrated, not by mere words, but by convincing actions, an open-minded desire to agree upon a contract.

As the order stands, Respondent is enjoined from refusing to bargain, and is affirmatively ordered to bargain, with respect to hours of work and other conditions of employment. Respondent not only bargained with the Union with respect to hours of work and other conditions of employment, it actually (prior to the hearings before the Trial Examiner) reached agreement with the Union with respect thereto. Why, then, should Respondent be enjoined from refusing to bargain, or order to bargain, with respect to hours of work and other conditions of employment?

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18 The only disagreement concerning the arbitration of grievances was as to whether the Impartial Umpire should be appointed by one of the Judges of the United States District Court, as contended by Respondent, or by the Commissioner of Conciliation of the Department of Labor, as contended by the Union.

We submit that even though the Court agrees with the Board that Respondent should be enjoined from making general increases in wage rates without consulting the Union, Respondent should not be enjoined from refusing to do, or ordered to do, what it had already fully done before the Board's Order was issued; and that the injunction should be limited to making general increases in wage rates without consulting the Union.

Even after the Union abandoned bargaining, and was relying upon the economic force of a threatened strike to accomplish its demands, Respondent, although naturally and properly reluctant to at all appear to capitulate to a threat of force,[19] fully recognized and performed its duty, under the law, to bargain with the Union in good faith whenever requested to do so.

There was no finding, nor any evidence, nor any contention, that Respondent ever interfered with any effort of the Union to bargain with it. On the contrary, the evidence shows, without dispute, that the parties bargained with more than ordinary success from August 31, through October 17, 1945; that the Union abruptly terminated the bargaining and gave notice of intent to strike on October 18, 1945; that Respondent, upon request, resumed bargaining, and made substantial concessions from its previous bargaining insistencies, on November 7 and 8, 1945; that the Union terminated the bargaining again on November 8, 1945; that Respondent, upon request, again resumed bargaining on December 19, 1945; and that no further bargaining was thereafter requested or contemplated.

It is in this situation that the Board's Order, as it now stands, enjoins Respondent from "in any manner interfering with the efforts of" the Union to bargain with it

[19] Capitulation, or the appearance of capitulating, to a threat of force is seldom wise and is never pleasant.

[R. 63 (b)]. Respondent has never interfered with any bargaining effort of the Union, and there is no finding, or any basis for a finding, that it did. Respondent, on the other hand, diligently and in good faith, tried to persuade the Union to make a fair and proper contract, and almost succeeded in so doing. Remedy will, in this case, lose all relationship to wrong done, and to merit of the controversy, if Respondent is enjoined from interfering with the bargaining efforts of the Union.

It must be obvious that the purpose of the belated enforcement of the Board's Order is to try to revive employee interest in the Union. It may be that the policy of the law is to encourage the organization of unions, and that this Court should support that purpose. It cannot be that this Court should lend its support to distortions of fact, by enforcing orders from which it would appear (or could be made to appear) that an employer did things which it did not do, or refused to do things which it did do, or that an employer which bargained with a union in good faith whenever requested to do so, and sincerely tried to persuade the Union to make a contract, interfered with the bargaining efforts of the Union.

The Order of the Board, as it stands [R. 62-63, par. 1 (a)], broadly enjoins Respondent from "taking action, without prior consultation with said organization, with respect to rates of pay, wages, hours of employment and other conditions of employment."

Strictly construed, as it might conceivably be, such an Order would require prior consultation with the Union with respect to each of the innumerable and normal day-to-day activities which are immediately indispensable to the operation of any manufacturing business. Respondent has certainly done no wrong which merits such punishment.

The Board's Order, in this regard, goes far beyond the Order which was recommended by the Trial Examiner. The only unilateral action charged, complained of or found, was the general wage increase of January 1, 1946, and the recommendation of the Trial Examiner (R. 102 [b]) was that Respondent be ordered to cease and desist from "Unilaterally granting wage increases or making any other changes in wage rates of the employees in the aforesaid unit without consulting with said Union".

Respondent excepted to so much of the recommended order as related to other than general wage increases (R. 53, par. 5), but the Board did not rule on said exception.

In the normal day-to-day operation of any manufacturing establishment there are many decisions which must be made, and many actions which must be taken immediately and without opportunity for prior consultation in the nature of a collective bargaining conference. Collectively bargained contracts cannot, and normally do not, attempt to provide, in minute detail, for every situation which may arise. It is impossible to soundly do anything more in such contracts than agree upon controlling general principles and provide machinery for adjusting disagreements on account of the interpretation and application thereof. All of this Respondent tried to do, and Respondent should not be so severely penalized because the Union refused to effectuate the agreements which were reached.

The Board's Order, if enforced as it stands, would handicap Respondent in the operation of its mill more than Respondent would have been handicapped if the Union had executed the contract which was agreed upon.

For example, the parties agreed in collective bargaining that Respondent would have the right to make temporary job transfers without consulting the Union (Respondent's Exhibit 4, page 10) and that efficient operation of the mill required latitude in changing work assignments (Respondent's Exhibit 4, page 15). These, of course, are illustrations only, and many other such illustrations could be cited. The point is that the Union, for terminating the bargaining and refusing to sign the contract which was agreed upon, should not be rewarded by being given a greater strangle-hold on the operation of the business than it asked for when the bargaining was in progress.

The Board expressly found (R. 61-62, supra, pp. 54-55) that Respondent did not refuse to bargain with the Union regarding the application and administration of the incentive wage plan, and the order, if enforced, should certainly be clarified so as to preclude any possibility of its being construed so as to require prior consultation with the Union regarding the normal and necessary day-to-day administration of the incentive wage plan. Otherwise, the order might conceivably be construed so as to conflict with the only clear-cut finding of fact which the Board made.

Even though the Court, contrary to our primary contention, should hold that Respondent misconceived its duty, and that the January 1, 1946, general wage increase should not have been made without additional consultation with the Union, it certainly cannot be justly said that Respondent did any other wrong, and we respectfully submit that the order of the Board, if it is to be enforced, should be restricted to the making of general increases in wage rates without consulting the Union.

CONCLUSION.

Respondent respectfully submits:

I.

The Respondent did not refuse to bargain by increasing the wage rates of its employees without consulting the Union, after all collective bargaining had been completely and finally terminated by the Union, and at a time when no further collective bargaining was pending, requested or anticipated;

That the Order sought to be enforced should not be enforced, because it should not have been issued; and

That the judgment of the Circuit Court, denying enforcement of said order, should be affirmed, even though this Court feels that the inappropriate and obviously incorrect dicta in the opinion of the Circuit Court should be publicly disapproved.

II.

That said Order, even if properly issued, should not now be enforced, because the Union, by refusing to sign the contract which was thereafter agreed upon in collective bargaining, made further compliance with said Order unreasonable, if not impossible; and

That the case should be remanded, either to the Circuit Court or to the Board, we care not which, for taking proof and making findings with respect to Respondent's verified allegations in this regard.

III.

That, even if Respondent did refuse to bargain by unilaterally increasing the wage rates of its employees on January 1, 1946, it did no other wrong, and that the

Order, if it is to be enforced, should be modified so as to restrict it to the only wrong done.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 197

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CROMPTON-HIGHLAND MILLS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR REHEARING

Comes now the National Labor Relations Board and petitions this Court for a rehearing in the above-entitled proceeding. In support of its petition, the Board respectfully shows the Court as follows:

The decision of this Court in this matter, after sustaining the Board's position that the employer's conduct constituted an unfair labor practice, directed modification of the order which the Board

deemed appropriate, including the elimination of a requirement that the employer post suitable notices. The Board desires rehearing limited to the single question of the propriety of requiring the employer to post notices as part of the remedial action appropriate to the correction of the unfair labor practice found. Having had no reason to anticipate that this aspect of its order was in question, the Board had not in its earlier briefs addressed itself to this matter. The point had not been raised by the employer, and under Section 10(e) of the Act, the Board assumed it could not be in issue. The Board does not, of course, object to adapting the required notice to the substantive decree approved by this Court. But because it is important in the adequate redress of unfair labor practices, the Board is reluctant to risk impairment of a significant feature of its remedial practice by the complete elimination of the notice provision without further consideration by this Court.

Section 10 (c) of the National Labor Relations Act provides that, whenever the Board finds that a person has engaged in any unfair labor practice, the Board "shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

The Act "committed to the Board, subject to limited judicial review," the task of defining "the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations." *Phelps-Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, 194. In performing this function, the "Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices. The public right and duty extend not only to the prevention of unfair labor practices by the employer in the future, but to the prevention of his enjoyment of any advantage which he has gained by violation of the Act . . . as the means of defeating the statutory policy and purpose." *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 364.[1] And in reviewing the remedy which the Board fashions, "Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy." *Phelps-Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, 194. Within this frame of reference, the relevant inquiry is whether, in requiring the employer to post suitable notices, the

[1] See also, *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82.

Board's remedy bears a rational relation to undoing the past effect of the unfair labor practice and to preventing its future recurrence.

From the first order recorded in the Board's reports to the most recent order entered, with a few early exceptions, a fixed feature of every such order is the requirement that the person found to have engaged in an unfair labor practice, whether employer or labor organization, publicize the terms of the order among the employees in order that they may have accurate information as to the nature of the obligation to which adherence is enjoined.[2] Customarily, this dissemination of information takes the form of posting notices in conspicuous places in the plant where the unfair labor practice occurred, including all places where notices to employees are customarily placed. Where warranted by the circumstances of the case, the mode of communication may be varied to include the mailing of separate notices to individual employees, the publication of notices in the local newspapers, and the posting of the notices in other of the employer's plants than that at which the unfair labor practice was committed if the

[2] National Labor Relations Board, Thirteenth Annual Report (Gov't. Print. Off., 1949), p. 63; Twelfth Annual Report, pp. 37, 40; Eleventh Annual Report, p. 49; Tenth Annual Report, p. 53; Ninth Annual Report, pp. 48, 49-50; Eighth Annual Report, pp. 38-39; Seventh Annual Report, p. 52; Sixth Annual Report, p. 72; Fifth Annual Report, p. 78; Fourth Annual Report, p. 109; Third Annual Report, p. 214; Second Annual Report, p. 156; First Annual Report, pp. 125-126, 127, 132, 134.

effect of its perpetration transcends the limits of the single plant. To assure means of knowledge, the notice may be ordered written in a foreign language with which non-English speaking employees are familiar. The contents of the notice are fitted to the situation under redress. Thus the substance of the notice and the mode of its dissemination are adapted to the circumstances of the individual case, but in every case it is indispensable that the essence of the order and assurance of respect for its terms be publicized among the employees in ungarbled form through channels by which employees customarily obtain information.

Stemming from the decree in *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548,[3] confirmed by the experience of the old National Labor Relations Board under the National Industrial Recovery Act,[4] plainly contemplated as usual remedial action by the Congress,[5] the "posting of appropriate bulletins"[6] has until the present case been uniformly approved by this Court as

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[3] See, *National Labor Relations Board* v. *Brown Paper Mill Company, Inc.*, 108 F. 2d 867, 871-872 (C. A. 5).

[4] The practice of requiring employers to post notices had previously been frequently employed by the first National Labor Relations Board, set up under Public Resolution No. 44 (73d. Cong.) to investigate charges of violation of Section 7 (a) of the National Industrial Recovery Act. (See *e.g.*, *Matter of Globe Gabbe Corp.*, 2 N. L. R. B. (old) 60, 62.

[5] H. Rep. No. 1147, 74th Cong., 1st Sess., 23-24.

[6] *Ibid.*

within the allowable area of Board discretion in shaping an appropriate remedy.[7] Until the present case, the statement of Judge Learned Hand nine years ago remained true:[8] "The employer must indeed post a notice that he will conform to the Board's order; that is no longer open to dispute, and, so far as we know, no court has ever held the contrary." Thus, in the single instance where the propriety of posting any notice was squarely in question, the Court of Appeals for the Fourth Circuit, after holding that no notice need be posted because there was "no ground to apprehend a continuation of illegal practices, and no necessity to subject the employer to the stigma attached to the publication" (94 F. 2d 61, 67), upon rehearing reversed its position, stating that (*Mooresville Cotton Mills* v. *National Labor Relations Board*, 97 F. 2d 959, 963):

> . . . it is doubtless the better practice to require the posting of notices *in all cases* so

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[7] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268; *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348; *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 462-463; *National Labor Relations Board* v. *Bradford Dyeing Ass'n.*, 310 U. S. 318, 343; n. 9; *National Licorice Company* v. *National Labor Relations Board*, 309 U. S. 350, 356, 367; *National Labor Relations Board* v. *Express Publishing Company*, 312 U. S. 426, 438; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231; *J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332, 341-342.

[8] *Art Metals Construction Company* v. *National Labor Relations Board*, 110 F. 2d 148, 151 (C. A. 2), and see dissenting opinion at 152-154. See also, 2 Teller, *Labor Disputes and Collective Bargaining*, § 373 (1940).

> that the employees may have full and accurate information of the decisions of the Board. (Italics supplied.)

And in a companion case decided the same day, the Court of Appeals for the Fourth Circuit stated that (*National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. 2d 951, 959 (C. A. 4)):

> The requirement that notice of the decision and order of the court should be published whereby employees may receive precise information of the action of the Board upon a complaint against their employer is within the power of the Board to direct such affirmative action on the part of the employer as will effectuate the policies of the Act.

This Court's elimination of the notice-posting requirement in this case is, therefore, an upset of uniform, settled, and undeviating practice sanctioned by the experience derived from long years in the administration of the National Labor Relations Act. There is nothing in the posture of the present case which so far differentiates it from the run of cases that publication of accurate information by the employer of the nature of its obligation has no rational connection with the effectuation of the statutory policy. On the contrary, where, as here, the conduct of the employer was not "in good faith" and was "manifestly inconsistent with the principle of collective bargaining" (Slip Op., p. 8), and the issue presented by the conduct was

deemed by this Court important "in the administration of the labor relations statutes." (Slip Op., p. 3), the unfair labor practice cannot be regarded as minimal and tangential. To dissipate its effect and to prevent its recurrence, the suasion which arises from informed publicity is plainly appropriate.

When the free exercise by employees of the right to collective bargaining is thwarted by the commission of an unfair labor practice, the inhibition to the exercise of the right which arises among the employees will in some measure be dissipated by the employer's public assurance that the practice will not recur in the future. The posting of notices serves to restore the situation which the employer's infraction has disturbed by the resurgence of confidence in the employees that their rights cannot be infringed with impunity. To the Court it may seem clear that the employer will not again engage in forbidden labor practices. To the employees, with the wrongful conduct uppermost in their minds, it may not be so clear. An announcement from the source of managerial authority is the means best calculated to recreate the freedom which is guaranteed in the Act and which has been impaired by its infringement.

By the same token, the posting of notices prevents the occurrence of unfair labor practices in the future. Employees apprised of the scope of the employer's obligation will be alert to detect and protest its infringement. Conversely, an employer,

aware that its employees are well-informed, will not repeat its earlier encroachment in the face of instant recognition of its wayward character.

It is no hardship or humiliation to the employer to announce publicly its intention that its labor relations will conform to the law. Nor is the degree of culpability of a particular employer relevant to the need for posting a notice, for so long as the unfair labor practice justifies an order requiring the employer to cease and desist from its commission, it equally justifies the dissemination of accurate information among the employees of the nature of the obligation and the assurance to honor it. Otherwise, it becomes to the last degree difficult and untenable to measure the minutia of difference between the circumstances justifying a cease and desist order sometimes with but sometimes without the public information aspect which until now has been its unbroken attribute.

Illustrative of the elusive character of any such distinction is this Court's decision in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333. In that case the employees involved went on strike upon the failure of negotiations over a proposed contract. This Court expressly pointed out that there was "no evidence and no finding that the respondent was guilty of any unfair labor practice" before the strike (304 U. S., at 345). Upon the conclusion of the strike the employer took back most of the strikers but

discriminated against a few of them because of their union activity (304 U. S., at 346-347). This discrimination was the only unfair labor practice involved in the case. The Board in its order required the employer to post a notice. Upon these facts this Court ruled, "The affirmative relief ordered by the Board was within its powers and its order was not arbitrary or capricious" (304 U. S., at 348).

What objective standard can be drawn to ascertain with fair predictability in the run of cases between the *Mackay* case and the present one whether the posting of a notice is appropriate? For example, by what criterion is *J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332, 341-342, where, as here, the sole problem presented was the delimitation of the collective bargaining obligation, so far differentiated from the present case as to make it appropriate to require the mailing of individual notices in that case but to make inappropriate any form of publicity in the present case? We recognize that the ease of application of a mechanical rule is no sufficient reason in itself for rejecting a flexible rule. However, the propensity for dissipating and preventing an unfair labor practice which accurate information of the scope of an obligation and assurance of conformity to it gives rise to in every case, the tenuity of any line of distinction which can be drawn, and the invitation to barren litigation which such a line

would present overbalance any conceivable advantage which the elimination of publicity might serve in an isolated case. In this case, as in every case, a rational statutory objective is served by requiring the employer "to publish notices that it would 'cease and desist'" from its unlawful activity and thereby "to convey to the employees the knowledge of a guarantee of an unhampered right in the future" to bargain collectively. *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 462.

One final matter deserves mention. At no stage of the proceedings before the Board, the court below, or this Court did the employer object to the requirement that it post notices.[9] In the light of the long-settled practice of requiring notice-posting in all cases, the employer's challenge to the breadth of the order imported no more insofar as the notice was concerned than that its language would naturally be modified to conform to any constriction in the order's terms. But the Board had no reason to anticipate, and the employer did not suggest, that the total elimination of notice-posting was in issue. *May Department Stores Co.*

[9] No such exception was noted to the trial examiner's intermediate report (R. 53-54). None was mentioned in the employer's brief before this Court. (Em. Br., pp. 53-61.) And the employer's brief in the court below implicitly acknowledged the propriety of notice-posting when it urged "that any notice to be posted by Respondent should be confined to a statement that Respondent will not unilaterally grant any general wage increases to the employees in the defined bargaining unit without consulting the Union." (Em. Br., p. 39).

v. *National Labor Relations Board*, 326 U. S. 376, 386, n. 5. In conformity with the familiar rule that an objection not timely made is foreclosed, which has particular appositeness in the relation between administrative agency and reviewing court,[10] Section 10 (e) of the National Labor Relations Act provides that:

> No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect shall be excused because of extraordinary circumstances.

No extraordinary circumstances appearing, and the Board not having "patently traveled outside the orbit of its authority," it is "not within the power of the court . . . to make the deletion it made." *National Labor Relations Board* v. *Cheney California Lumber Co.*, 327 U. S. 385, 388-389; *Marshall Field & Co.* v. *National Labor Relations Board*, 318 U. S. 253. No more should be done with respect to the notice than to require that it be adapted to the terms of the decree ultimately entered.

WHEREFORE, it is prayed that a rehearing be granted and that, upon such rehearing, the Court modify its decision to require the posting of notices adapted to the constricted terms of the decree to

[10] See the cases cited in Mr. Justice Reed's dissenting opinion in *United States ex rel. Johnson* v. *Shaughnessy*, No. 506, This Term, decided May 9, 1949.

be entered, and grant such other and further relief as the Court may deem proper.

Respectfully submitted,

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JUNE, 1949.

CERTIFICATE OF COUNSEL

Comes now Philip B. Perlman, Solicitor General, and certifies that he has read and knows the contents of the foregoing petition, and that said petition is filed in good faith and not for purposes of delay.

PHILIP B. PERLMAN,
Solicitor General.

JUNE, 1949.

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